

Terms and Conditions of Sale – Distinctive Products (2012)

This document together with all attachments defines the terms and conditions (these Terms and Conditions) on which Distinctive Products hereby known as DP supply any of the products (each a Product) listed in our brochures or catalogue and on the website www.distinctivegolf.com.au (hereinafter referred to as "the Site") to you. Please read these terms and conditions carefully before ordering any Products. You should understand that by ordering any Products from us, you agree to be bound by these terms and conditions. Please print out a copy of these Terms and Conditions for further clarification and future reference.

1. Introduction

- 1.1. We are Distinctive Products, ABN 46 588 391 257, 20 Silvan Road Wattle Glen Victoria 3096 Australia, trading as Distinctive Products Golf and on the web as www.distinctivegolf.com.au and its related web associates and or officers unless otherwise stated.
- 1.2. These Terms and Conditions govern the supply by us of any Product ordered by you by phone, email, fax, mail, or from the website. By placing an order and agreeing to purchase Products from us, you agree to be legally bound by these Terms and Conditions.
- 1.3. In these Terms and Conditions:
 - 1.3.1. "Account" means the account that will or may be set up either by administration or you on the Site if you would like to submit an Order on the Site;
 - 1.3.2. "Acknowledgement" means our acknowledgement of your Order by email;
 - 1.3.3. "Breach of Duty" has the meaning given to it in these Terms and Conditions;
 - 1.3.4. "Business Day" means a day which is neither (i) a Saturday or Sunday, nor (ii) a public holiday anywhere in Australia;
 - 1.3.5. "Confirmation of Order" means our email to you, in which we accept your Order in accordance with clause 4.9 below;
 - 1.3.6. "Contract" means your Order of a Product or Products in accordance with these Terms and Conditions which we accept in accordance with clause 4.9 below;
 - 1.3.7. "Customer" means individual or business who places an Order via email, fax, mail or on the Site;
 - 1.3.8. "Liability" has the meaning given to it in these Terms and Conditions;
 - 1.3.9. "Order" means the order submitted by you to us via email, fax, mail or from the Site to purchase a Product from DP;
 - 1.3.10. "you" means the Customer whether an individual, corporation or business who places an Order;
 - 1.3.11. references to "clauses" are to clauses of these Terms and Conditions;
 - 1.3.12. headings are for ease of reference only and shall not affect the interpretation or construction of the Terms and Conditions;
 - 1.3.13. words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include every gender and references to persons shall include an individual, company, corporation, firm or partnership;
 - 1.3.14. references to "includes" or "including" or like words or expressions shall mean without limitation.
- 1.4. These Terms and Conditions are our copyrighted intellectual property. Use by third parties - even of extracts - for the commercial purposes of offering goods and/or services' is not permitted. Infringements may be subject to legal action.

2. Orders

- 2.1. To place an order with DP you must be over 18 years of age be able to legally transact via Direct Debit, PayPal or a valid credit or debit card acceptable to DP.

3. Influence

- 3.1. These Terms and Conditions shall apply to all Orders and Contracts made or to be made by DP for the sale and supply of Products. When you submit an Order to DP, give any delivery instructions or accept delivery of any Products, this shall in any event constitute your absolute acceptance of these Terms and Conditions. Nothing in these Terms and Conditions affects your statutory rights (including the right to insist that goods you buy from businesses must correspond with their description, be fit for their purpose and be of satisfactory quality).
- 3.2. These Terms and Conditions shall prevail over any other terms of supply put forward by you. Any conditions that you submit propose or specify in whatever form and at whatever time, whether in writing, by email or orally, are expressly waived and excluded.
- 3.3. No other terms or changes to the Terms and Conditions shall be binding unless agreed in writing signed by DP.

4. Order Procedure

- 4.1. An Order can be made by email, fax, in writing or via the Site. If via the Site you must register for an Account on the Site, follow the instructions on the Site as to how to make your Order and for any making changes to your prospective Order before you submit it to the Site.
- 4.2. Orders received by DP other than via the Site will be dealt with manually. All and any changes must be advised in writing to DP to be accepted as valid changes to any manual order received.
- 4.3. Irrespective of any previous prices quoted or available on the Site, once you select a Product that you wish to Order, you will then be shown or told (on the Site) all and any additional charges you must pay including GST, if applicable, and any applicable delivery charges. Unless otherwise stipulated all charges are in Australian currency. Subject to clause 4.12 below, this is the total of any purchases made and what is required to be paid for receipt of the ordered Product.
- 4.4. The Products will generally be required to be paid for in full prior to shipment unless other arrangements have been made with DP. We will accept direct debit to the business bank account or payment via Paypal. Cheques will only be accepted with prior approval. Without prior payment or approved payment options your order will not be processed in the system. Depending on the results of a credit check we reserve the right not to offer certain forms of payment and to refer you to our other forms of payment.
- 4.5. If you are asked for details of a payment card, you must be fully entitled to use that card or account. The card or account must have sufficient funds to cover the proposed payment to us.
- 4.6. You undertake that all details you provide to us for the purpose of any purchase from DP will be correct, that the credit or debit card, or account or other payment method which you use is either your own or company or business approved and that there are sufficient funds or credit facilities to cover the cost of the Product. We reserve the right to obtain validation of your payment details before providing you with the Product.
- 4.7. When you submit an Order to DP in any form you agree that you do so subject to these Terms and Conditions current at the date you submit your Order. You are responsible for reviewing the latest Terms and Conditions each time you submit your Order.
- 4.8. Your Order remains valid as an offer until we confirm the order back to you or we forward a notice revoking your Order.
- 4.9. We shall not be obliged to supply any Product to you until we have accepted your Order. Unless expressly stating that we accept your order, an email, letter, fax, verbal acceptance or other Acknowledgement of your Order by us is purely for information purposes and does not constitute a Confirmation of Order. In that Acknowledgement, we may give you an Order reference number and details of the Product you have ordered. We may in our discretion refuse to accept an Order from you for any reason, including unavailability of supplies or we may offer you an alternative Product (in which case we may require you to re-submit a new or revised Order).

- 4.10. A legal Contract shall be formed and we shall be legally bound to supply the Product to you when we accept your Order. Acceptance shall take place when we expressly accept your Order by email to you where possible, in the form of a document called a "Confirmation of Order" stating that we are accepting your Order. Our Confirmation of Order shall be deemed to come into effect when sent to you. Without affecting your obligation to pay us earlier, we may send an invoice to you at any time after we have accepted your Order. Until the time when we accept your Order, we reserve the right to refuse to process your Order and you reserve the right to cancel your Order. If we or you have cancelled your Order before we have accepted it, then we will promptly refund any payment already made by you for Product.
- 4.11. If you discover that you have made a mistake with your Order after you it has been submitted, please contact us immediately. We will endeavor to correct the mistake to the best of our ability however; we cannot guarantee that we will be able to amend your Order in accordance with your instructions.
- 4.12. We will endeavor to ensure that the price given to you is accurate, but the price of your Order will need to be validated by us as part of our acceptance procedure. If the price for the Order changes before we accept your Order, we will contact you and ask you to confirm that you wish to proceed at the amended price.
- 4.13. A Contract will relate only to those Products whose dispatch we have confirmed in any confirmation to you. We will not be obliged to supply any other Products which may have been part of your Order until we have confirmed the new order details with you relating to the new Products sort.
- 4.14. Title for the Products does not pass to you until cleared funds obtained for the Product this includes any account customers. Risk of loss or damage to the goods passes to you on dispatch.
- 4.15. There may be a late charge fee if any payment is deemed late and outside agreed trading terms. DP will be entitled to charge interest on any overdue accounts at a rate of 1.5% per calendar month on any overdue amounts. The customer also agrees to pay all fees, collection costs, legal fees incurred in the collection of any outstanding amounts.
- 4.16. You must only submit to DP information which is accurate and not misleading and you must keep it up to date and inform us of changes.

5. Delivery

- 5.1. Every effort will be made to deliver the Product to you at the place of delivery requested by you in your Order.
- 5.2. We aim to deliver within the time indicated by us at the time of your Order (and updated in any Confirmation of Order to you) however we cannot promise an exact date and will not be responsible for any delays. Dependent on stock and where the delivery is being sent we will aim to dispatch the product within 2-3 working days from either cleared funds or agreed terms, but we cannot guarantee any firm delivery dates.
- 5.3. Should any hold up occur we will inform you of any new estimated delivery date, but, to the extent permitted by law, we shall not be liable to you for any losses, liabilities, costs, damages, charges or expenses arising out of late delivery.
- 5.4. On delivery of the Product, you may be required to sign for delivery. You agree to inspect the Product for any obvious faults, defects or damage before you sign for delivery. You need to keep receipt of the delivered Product in case of future discussions with us.
- 5.5. We may not be able to deliver to some locations, if this is the case, we will inform you using the contact details that you provide to us and arrange for cancellation of the Order or delivery to an alternative delivery address.
- 5.6. The Product can be sent in a number of different packages to you (box, envelope, bag etc) and is dependent on the type of product ordered and quantity. Any special packaging requests by you is subject to additional charges. DP will advise of all freight costs and these are an extra charge payable by you the customer.
- 5.7. All risk in the Product shall pass to you upon delivery, except that, where delivery is delayed due to a breach of your obligations under a Contract, risk shall pass at the date when delivery would have occurred but for your breach. From the time when risk passes to you, we will not be liable for loss or destruction of the Product.

- 5.8. You must take care when opening the Product so as not to damage it, particularly when using any sharp instruments.
- 5.9. You shall ensure that you are ready for safe receipt of the Product without undue delay and at any time reasonably specified by us.
- 5.10. If you are not available to take delivery or collection, please advise us to arrange alternative delivery or if a third party carrier is used they may leave details of where the products can be collected.
- 5.11. If delivery or collection is delayed through your unreasonable refusal to accept delivery or if you do not (within two weeks of our first attempt to deliver the Product to you) accept delivery or collect the Product from the carrier, then we may (without affecting any other right or remedy available to us) do either or both of the following:
- 5.11.1. charge you for our reasonable storage fee and other costs reasonably incurred by us; or
- 5.11.2. no longer make the Product available for delivery or collection and notify you that we are immediately cancelling the applicable Contract, in which case we will refund to you any money already paid to us under an existing order/contract, less a reasonable administration charge (including for attempting to deliver and then returning the Product, and any storage fees as provided for in clause 5.11(1) above).
- 5.12. It is your responsibility to ensure that the Products are sufficient and suitable for your purposes and meet your individual requirements. We do not warrant that the Products will meet your individual requirements. You acknowledge that the Products are standard and not made adapted to fit any particular requirements that you may have unless specifically ordered and agreed to.
- 5.13. Claims for shortages, damages etc will only be recognised if made in writing and forwarded to the business within 7 days of the delivery of product. In the case of any overpayment this will need to be notified within 7 days of invoice.

6. Cancellation

- 6.1. We may cancel an order/contract if the Product is not available for any reason. We will notify you if this is the case and return any payment that you have made.
- 6.2. We will usually refund any money received from you using the same method originally used by you to pay for the Product.

7. Cancellation by Customer (Non-Faulty Product)

- 7.1. If you wish to cancel your order please do so by emailing to Peter@distinctivegolf.com.au setting out your reasons for the cancellation. No fees apply unless the product has been dispatched which if so any costs associated with the dispatch will be deducted from any money owed.

8. Warranty of Products

- 8.1. We warrant that:
- 8.1.1. the Product will be delivered undamaged in the quantities ordered; and
- 8.1.2. the Product will conform with the manufacturer's latest published instructions as set out on their Site, DP Site or in our Product material at the time of your Order.
- 8.2. The Product is intended to be used strictly in accordance with the manufacturer's latest published instructions as set out on their Site, the DP Site or as on the Product itself. It is your responsibility to ensure that you use the Product strictly in accordance with those instructions.
- 8.3. Before delivery, we may make minor adjustments to material, colour, weight, measurements, design and other features to the extent that they are reasonable.
- 8.4. We will attempt to deliver Products in excellent condition. However, if you tell us that the Product is faulty, you agree to keep the Product in its current condition available for us (or our agent) to inspect within a reasonable time.

- 8.5. In order to provide you with any remedies for a faulty Product, we may need your assistance and prompt provision of certain information regarding the Product, including:
- 8.5.1. you specifying with reasonable detail the way in which it is alleged that the Product is damaged or defective; and
 - 8.5.2. you providing us with the delivery note number and such other information as we reasonably require.
- 8.6. If you would like us to repair, replace or provide a refund for the Product where it did conform to the applicable Contract, and we find that the Product has:
- 8.6.1. been misused, abused or subjected to neglect, improper or inadequate care, carelessness, damage or abnormal conditions; or
 - 8.6.2. been involved in any accident or damage caused by an incorrect attempt at modification or repair; or
 - 8.6.3. been dealt with or used contrary to our or the manufacturer's instructions for the Product; or
 - 8.6.4. deteriorated through normal wear and tear,
- after delivery by us, we may at our discretion decide not to repair, replace or refund you for the Product and/or we may require you to pay all reasonable carriage costs and servicing costs at our current standard fees and costs and charge this to your credit or debit card, or the payment details that you provided to us when you made your Order, and, to the extent permitted by law, we shall not be liable to you for any losses, liabilities, costs, damages, charges or expenses as a result.

9. Redemption of any DP Vouchers

- 9.1. You may use any DP promotional vouchers as payment for Products.
- 9.2. To redeem a voucher you must advise us via email of your intention to use the voucher as either part or full payment for Product.
- 9.3. We may email promotional vouchers to you. Subject to clause 11.2, we accept no liability for errors in the email address of the voucher recipient.
- 9.4. If you have a promotional voucher, that voucher can be used by someone other than you and you can assign your rights to use that voucher.
- 9.5. In the event of fraud, an attempt at deception or in the event of the suspicion of other illegal activities in connection with a gift voucher purchase or redemption of that voucher on the Site, we are entitled to close your Account and/or require a different means of payment.
- 9.6. We assume no liability for the loss, theft or illegibility of gift or promotional vouchers.
- 9.7. Conditions for the redemption of promotional vouchers:
- 9.7.1. From time to time we may release promotional vouchers that may be used to purchase any product sold by DP, which we will send to you by email. These can be redeemed within the use by dates and on any Product.
 - 9.7.2. Promotional vouchers can only be redeemed once and cannot be used in conjunction with other promotional vouchers. Individual brands may be excluded from voucher promotions.
 - 9.7.3. The credit of a promotional voucher cannot be used to pay for products from third parties other than us.
 - 9.7.4. If you place an Order for a Product less than the value of the promotional voucher, no refund or residual credit will be returned to you.
 - 9.7.5. The credit of a promotional voucher does not accrue interest nor does it have a cash value.
 - 9.7.6. If the credit of a promotional voucher is insufficient for the Order you wish to make, you may make up the difference through payment.

10. Limitation of Liability

- 10.1. Some legal obligations imposed by law cannot be excluded or limited. No attempt to limit or exclude such liability is made by DP and they apply to these terms and your use of this site to the extent required by the relevant laws. This clause 10 prevails over all other clauses and sets forth our entire Liability, and your sole and exclusive remedies, for:
 - 10.2. the performance, non-performance, purported performance or delay in performance of these Terms and Conditions or a Contract or the Site (or any part of it or them); or
 - 10.3. otherwise in relation to these Terms and Conditions or the entering into or performance of these Terms and Conditions.
- 10.4. DP excludes to the extent permitted by law all other terms, conditions, warranties and guarantees which might be implied into these terms.

11. Guarantee and Customer complaints

- 11.1. We shall perform our obligations under these Terms and Conditions with reasonable skills and care.
- 11.2. We place great value on our customer satisfaction. You may contact us at any time using the contact details given in clause 1.1 of these Terms and Conditions. We will attempt to address your concerns as soon as reasonably possible and will contact you on receipt of any relevant enquiry or complaint. In guarantee cases, the manufacturer frequently must be involved, and as such it may take longer to resolve such an enquiry or complaint.
- 11.3. In the event of a complaint it will help us if you can describe the object of your complaint as accurately as possible and, where applicable, send us copies of the Order or at least the order number that we assign you in the Acknowledgement or Confirmation of Order. Should you not have received any reaction from us within five Business Days, please make further enquiries. In rare cases your emails may be caught up in our spam filters or not reach us, or correspondence that we send to you may otherwise not have reached you.

12. Privacy

- 12.1. DP may collect, use, store and disclose personal information in accordance with our Privacy Policy.

13. Circumstances beyond our control (force majeure clause)

- 13.1. We shall not be liable to you for any breach, hindrance or delay in the performance of a Contract attributable to any cause beyond our reasonable control, including without limitation any natural disaster and unavoidable incident, actions of third parties (including without limitation hackers, suppliers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, weather conditions, earthquake, natural disaster, accident, mechanical breakdown, third party software, failure or problems with public utility supplies (including electrical, telecoms or Internet failure), shortage of or inability to obtain supplies, materials, equipment or transportation ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen.
- 13.2. Either you or we may terminate a Contract forthwith by written notice to the other in the event that the Event of Force Majeure lasts for a period of two Business Days or more, in which event neither you nor we shall be liable to the other by reason of such termination (other than for the refund of a Product already paid for by you and not delivered).
- 13.3. If we have contracted to provide identical or similar Products to more than one Customer and are prevented from fully meeting our obligations to you by reason of an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

14. Notices

14.1. Any notice under a Contract shall be in writing and may be served by personal delivery or by pre-paid or recorded delivery letter or by email addressed to the relevant party at the address or email address of the relevant party last known to the other.

14.2. Any notice given by post shall be deemed to have been served two Business Days after the same has been posted if the recipient address is in the UK. Any notice given by email shall be deemed to have been served when the email has been proved to be received by the recipient's server. In proving such service it shall be sufficient to prove that the letter or email was properly addressed and, as the case may be, posted as a prepaid or recorded delivery letter or dispatched or a delivery report received.

15. Content on the Site

15.1. We shall use our reasonable endeavours to comply with any relevant regulations relating to the Site published by the Advertising Standards Authority. This information is presented for the purposes of promoting the goods and services of DP and providing information about DP to our suppliers, our customers and the general public. Some information available through the site is provided by third parties whom we make no representation about the accuracy of the content that has not expressly originated from DP.

16. Trade Marks

16.1. DP's name and other trade marks, which appear on this website, are trade marks of DP or the trade marks of other third parties DP represent .

16.2. Nothing contained on this website is to be construed as granting, by implication, estoppel, or otherwise, any license or right to display, use or link to the Trade Marks, whether registered or unregistered, without DP's prior written permission or the prior written permission of the relevant third party owner.

16.3. Your use of the Trade Marks, except as permitted in these terms and conditions, is strictly prohibited

17. Linked Sites

17.1. This website may be linked to other websites over which DP have no control. DP do not sponsor, endorse, adopt, confirm, guarantee or approve the content or representations made on those websites, likewise we make no representations about the accuracy of content contained on those websites. DP is not liable for the content on those websites DP's name and other trade marks, which appear on this website.

18. Proprietary Rights

18.1. The content on this website, including but not limited to text, photographs, images and illustrations, is protected by copyright, trade marks, service marks, and/or other intellectual property rights (which are governed by Australian and worldwide copyright laws and treaty provisions, privacy and publicity laws, and communication regulations and statutes).

18.2. The content is owned and controlled by DP or by third party content providers including any affiliates, suppliers, distributors, sponsors and licensors. These providers have licensed their content or the right to market their goods and/or services to DP. Content on this website is solely for your personal use. You agree to abide by the copyright notices, information, or restrictions contained in any content.

18.3. You may download a single copy of any content contained on this website, solely for your personal use, consistent with these terms and conditions, provided that you maintain the copyright and other notices contained in that content.

18.4. You may not copy, reproduce, republish, upload, post, transmit, distribute, and/or exploit the content in any way (including by e-mail or other electronic means) for commercial use – unless specifically permitted by DP in writing. Your modification of the content, use of the content on any other website or networked computer environment, or use of the content for any purpose other than personal use, violates the intellectual property rights and proprietary rights of the content owners and is prohibited.

18.5. Violation of intellectual property rights may result in significant civil liability or criminal penalties under Australian and/or worldwide intellectual property laws. Reproduction or use of content, except as authorised by these terms and conditions, is considered intentional infringement.

19. General

- 19.1. We shall keep a record of your Order and these Terms and Conditions until six years after we have accepted your Order. However, for your future reference, we advise you to print and keep a copy of these Terms and Conditions, your Order and any other documentation from DP.
- 19.2. No failure or delay by us or you in exercising any right under these Terms and Conditions or a Contract shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish our or your rights under these Terms and Conditions or a Contract.
- 19.3. If any clause in these Terms and Conditions or a Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other clause or part of any clause, all of which shall remain in full force and effect, so long as these Terms and Conditions or a Contract shall be capable of continuing in effect without the unenforceable term.
- 19.4. You shall not assign, transfer, novate, charge, sub-contract, create any trust over or deal in any other manner with these Terms and Conditions or a Contract or all or any of your rights or obligations under these Terms and Conditions or a Contract.
- 19.5. Nothing in these Terms and Conditions or a Contract shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between you and us.
- 19.6. No person who is not a party to these Terms and Conditions or a Contract shall acquire any rights under it or be entitled to benefit from any of its terms even if that person has relied on any such term or has indicated to any party to these Terms and Conditions or that Contract its assent to any such term.
- 19.7. These Terms and Conditions and a Contract (and all non-contractual obligations arising out of or connected to them) shall be governed and construed in accordance with Australian Law. Both we and you hereby submit to the non-exclusive jurisdiction of the Australian Courts. All dealings, correspondence and contacts between us shall be made or conducted in the English language.

20. Updating of the General Business Terms and Conditions

- 20.1. We reserve the right to amend these Terms and Conditions at any time. All amendments to these Terms and Conditions will be posted on-line. However, continued dealings with DP via all forms of business medium will be deemed to constitute acceptance of the new Terms and Conditions.