

MAURJEN PTY LTD TRADING AS FLY LEGSUP

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions:

- 1.1 **"Australian Consumer Law"** and **"ACL"** means the laws as contained in Schedule 2 to the Competition and Consumer Act 2010 as may be amended from time to time;
- 1.2 **"Business Day"** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in the state of New South Wales;
- 1.3 **"Customer"** means any person who places an Order;
- 1.4 **"Delivery Location"** means the address for delivery nominated by the Customer when placing an Order;
- 1.5 **"Event of Default"** means:
 - (a) a failure by the Customer to pay any part of the Purchase Price by the Payment Date;
 - (b) the Customer becoming an 'externally administered body corporate' as defined by the Corporations Act 2001 (Cth);
 - (c) any step being taken for the winding up or dissolution of the Customer, including the appointment of an administrator;
 - (d) the Customer being insolvent within the meaning of the Corporations Act 2001 (Cth);
 - (e) the Customer committing an 'act of bankruptcy' as defined by the Bankruptcy Act 1966 (Cth);
 - (f) a receiver or a receiver and manager being appointed to the Customer whether by a court or otherwise; and
 - (g) anything analogous or having substantially similar effect to any of the events specified in paragraphs (a) to (f) inclusive happens under the law of any applicable jurisdiction;
- 1.6 **"Fly LegsUp"**, **"Our"**, **"We"**, **"Us"** all mean Maurjen Pty Ltd ACN 168 281 463 trading as Fly LegsUp, its administrators, successors and permitted assigns;
- 1.7 **"Force Majeure Event"** means anything outside Fly LegsUp's reasonable control, including fire, storm, flood, frost, disease, earthquake, explosion, accident, enemy acts, war, sabotage, quarantine restriction, labour dispute, labour shortage, strikes, transport embargo or failure or delay in transportation, failure or problems with public utility supplies (including electrical, telecoms or internet failure), shortage of or inability to obtain supplies, materials or equipment;
- 1.8 **"Goods"** means the goods the subject of the Order;
- 1.9 **"GST Act"** means *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and the Regulations thereto, as may be amended from time to time;
- 1.10 **"Order"** means an order for goods placed by the Customer with Fly LegsUp in accordance with clause 2.1;
- 1.11 **"Order Form"** means the document setting out the Order, the form of which is determined by Fly LegsUp from time to time;
- 1.12 **"Payment Date"** means the date for payment of the Purchase Price (or part of the Purchase Price), determined in accordance with clause 4.2;
- 1.13 **"Purchase Price"** means the price for the Goods referred to in clause 3;
- 1.14 **"Related Entities"** means all related bodies corporate (as defined by the Corporations Act 2001 (Cth)), directors, officers, employees, servants and agents of Fly LegsUp;
- 1.15 **"Terms"** means these terms and conditions of sale, as may be amended from time to time and published on the Website;
- 1.16 **"Website"** means www.flylegs.com;

- 1.17 any heading is for convenience only and does not affect the interpretation of these Terms;
- 1.18 words in the singular include the plural, and words in one or more genders include all genders;
- 1.19 the expressions "including" and "such as" and similar expressions shall not imply any limitation;
- 1.20 words denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities; and
- 1.21 a reference to two or more persons means those persons jointly and severally.

2. ORDERS AND USE OF WEBSITE

- 2.1 To place an Order, the Customer must:
 - (a) follow the instructions on the Website as to how to make an Order; or
 - (b) complete and provide a copy of the Order Form, to Fly LegsUp by email or facsimile; or
 - (c) follow the instructions as expressly stated by Fly LegsUp or any Related Entities in writing to the Customer from time to time.
- 2.2 When an Order is submitted to the Website (or is otherwise placed in accordance with clause 2.1), the Customer agrees that it is making the order subject to the Terms and warrants that it has read, understood and agrees to be bound by the Terms. The Customer is responsible for reviewing, and warrants that it has reviewed, the Terms (as published on the Website, or as attached to the Order Form, or as otherwise provided to the Customer) each time the Customer submits an Order.
- 2.3 An Order for Goods constitutes an offer to purchase the Goods by the Customer subject to the Terms.
- 2.4 All Orders placed in accordance with clause 2.1 are subject to acceptance by Fly LegsUp. Fly LegsUp will notify the Customer whether an Order is accepted within 7 Business Days following the date the Order is placed by the Customer. An order confirmation from Fly LegsUp to a Customer, whether sent by email, fax, mail or hand delivery, ("an Order Confirmation") is considered final and indicative of a binding contract between Fly LegsUp and the Customer.
- 2.5 Once Fly LegsUp accepts an Order, the agreement between Fly LegsUp and the Customer for the supply of Goods is governed by the Terms, to the exclusion of any other terms and conditions. Once accepted, an Order can only be amended or cancelled with the express agreement of Fly LegsUp.
- 2.6 If an Order is rejected by Fly LegsUp or is cancelled by the Customer in accordance with clause 2.5, Fly LegsUp will refund to the Customer the Purchase Price paid (if any) by the Customer within 15 Business days.
- 2.7 Any and all use of the Website (or Order Form) by a Customer, or potential Customer or user of the Goods, is subject to and conditional upon the Terms.

3. PURCHASE PRICE

The Purchase Price for the Goods is the quoted price set out on the Website (or on any Order Confirmation) from time to time, and is not inclusive of shipment, tax, packaging and transport costs, unless otherwise expressly stated.

4. PAYMENT

- 4.1 All amounts payable by the Customer to Fly LegsUp under the Terms must be paid by supplying credit or debit card details from a credit or debit card company acceptable to Fly LegsUp, by Paypal, or by electronic funds transfer into the bank account nominated by Fly LegsUp.
- 4.2 Payment of the Purchase Price for the Goods is to be made in full by the Customer immediately upon placing an Order, unless otherwise agreed with Fly LegsUp in writing.
- 4.3 Notwithstanding any other clause of the Terms, if any supply by Fly LegsUp is subject to goods and services tax ("**GST**"), the Customer must pay to Fly LegsUp an additional amount that is:
- equal to the amount payable by the Customer for the relevant supply multiplied by the prevailing GST rate; and
 - payable at the same time as the price for the supply to which the additional amount relates.
- 4.4 In the event of a taxable supply (as that term is used in the GST Act), Fly LegsUp will provide a valid tax invoice (in the form prescribed by the GST Act) to the Customer.
- 4.5 All payments made by the Customer in relation to the Goods must be in Australian dollars.
- 4.6 Subject to clauses 4.3 and 4.4, the Customer is responsible for payment of all taxes, duties and other government charges payable in respect of the Goods, and must immediately provide Fly LegsUp with all necessary tax invoices, receipts and other documentation as may be required by Fly LegsUp in accordance with any applicable law, immediately upon request.

5. TITLE

- 5.1 Property and ownership in the Goods does not pass to the Customer, and remains with Fly LegsUp, until the payment of:
- the whole of the Purchase Price for all Goods supplied by Fly LegsUp to the Customer; and
 - all other amounts owing to Fly LegsUp by the Customer of any nature whatsoever.
- 5.2 Until property and ownership in the Goods passes to the Customer, the Customer:
- has no right, title or interest to, or in, the Goods and holds the Goods as fiduciary agent and bailee of Fly LegsUp;
 - must store the Goods in a manner which enables the Goods to be identified and cross-referenced to particular invoices issued by Fly LegsUp; and
 - is not authorised to sell the Goods.
- 5.3 If the Purchase Price, or any part of the Purchase Price, has not been paid, the Customer grants to Fly LegsUp an irrevocable licence, and irrevocably appoints Fly LegsUp and its authorised representatives and agents as the Customer's agent, to enter and remain on any premises upon which the Goods are stored to enable Fly LegsUp to:
- inspect any Goods;
 - determine whether the Customer is complying with the Customer's obligations under this clause 5; and
 - if the Customer has breached the Terms, reclaim possession of the Goods.
- 5.4 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, Fly LegsUp is entitled, without prejudice to any of its other rights or remedies under the Terms or at law (including the right to receive payment of the balance of the Purchase Price), to receive all insurance proceeds payable for the Goods, whether or not the Purchase Price has become payable by the Customer. The production of these Terms by Fly

LegsUp is sufficient evidence of Fly LegsUp's rights to receive the insurance proceeds without the need for any person dealing with Fly LegsUp to make further enquiries.

6. RISK

All Goods are at the risk of the Customer in all respects on and from shipment of the Goods to the Customer by Fly LegsUp, and the Customer accepts all risk of loss of, or damage to, the Goods regardless of the manner in which such loss or damage is caused, and whether or not such loss or damage is the fault of Fly LegsUp.

7. DELIVERY

- 7.1 Fly LegsUp will ship the Goods to the Delivery Location as nominated by the Customer.
- 7.2 All dates and times quoted for receipt of delivery are estimates only. Fly LegsUp shall not be liable in any way for the failure to supply the Goods within the stated time, or the non-receipt of the Goods once shipped by Fly LegsUp, and the Customer shall accept and pay for the Goods notwithstanding any such failure or non-receipt.
- 7.3 The Customer shall be responsible for all costs in relation to delivering the Goods to the Delivery Location including but not limited to any applicable insurance, freight and container charges.
- 7.4 Upon the receipt by the Customer of the Goods, the Goods shall be deemed to be of merchantable quality and been delivered in good order and condition and fit for the purposes for which they were acquired by the Customer, unless the Customer otherwise notifies Fly LegsUp in writing within 24 hours of receiving the Goods. Such notification must be delivered to:

Name: Maurjen Pty Ltd trading as Fly LegsUp
 Business Address: **14 Illaroo Street,
 Palm Beach, QLD, 4221**
 Telephone Number: +61 (2) 4317 97390
 Email: info@flylegs.com

- 7.5 If the Customer notifies Fly LegsUp of a defect in accordance with clause 7.4, the Customer must provide Fly LegsUp with such information as it may reasonably require, and if appropriate, reasonable access to inspect the Goods, within a reasonable time following delivery of the Goods, such as by returning the Goods to Fly LegsUp at its own expense. If the Customer fails to comply with this clause 7.5, the Goods will be deemed to be of merchantable quality and have been delivered in good order and condition and fit for the purposes for which they were acquired by the Customer.

8. LIMITATION OF LIABILITY AND WARRANTIES

- 8.1 Subject to clause 8.2 and the mandatory operation of law, and provided that the Customer has complied with the provisions of clause 7.4, if the Goods:
- are not of merchantable quality,
 - are not fit for the purpose for which they were acquired by the Customer; or
 - do not comply with any warranty implied into these Terms by the Australian Consumer Law, or any other applicable legislation,
- Fly LegsUp's liability is limited to either (at Fly LegsUp's discretion):
- replacing the Goods with other goods that conform with the Order (or as otherwise agreed between Fly LegsUp and the Customer); or
 - if payment of the Purchase Price, or any part of the Purchase Price, has been made by the Customer,

refunding the Purchase Price or any part (as the case may be),

subject to the Customer first restoring unencumbered ownership of the Goods to Fly LegsUp. The Customer will be liable for any costs associated with returning the Goods to Fly LegsUp. These benefits are in addition to other rights and remedies that may be available to the Customer at law.

8.2 Fly LegsUp will not accept the return of the Goods unless prior authorisation has been given and the Goods are in the same condition as at the date of shipment.

8.3 Except as provided by this clause 8:

- (a) all conditions, warranties or other terms, whether expressed or implied by law, in respect of the state, quality or condition of the Goods are excluded to the extent permitted by law;
- (b) the Customer warrants and represents to Fly LegsUp that, prior to use of the Goods, it has sought and relied upon medical advice in relation to use of the Goods by that Customer;
- (c) the Customer warrants and represents that it is relying on its own skill and judgement in relation to the quality of the Goods, their fitness for any purpose that may be required and not upon any conduct or representation by Fly LegsUp, or any Related Entities;
- (d) Fly LegsUp does not warrant, and excludes all liability in respect of, the accuracy, completeness, suitability, fitness for purpose or legality of any information accessed using the Website (or the transmission or the reception of the same, or the failure to transmit or to receive any information);
- (e) Fly LegsUp is not liable to any person for any loss or injury of any kind whatsoever including without limitation, for any indirect or consequential loss (including loss of profits or loss arising from any failure, defect or deficiency in the Goods) even if due to the negligence of Fly LegsUp arising out of or in connection with the Goods;
- (f) Fly LegsUp does not make any warranties or representations, and excludes all liability, in respect of whether the Goods are permitted to be used on particular flights in accordance with any particular airline's conditions of carriage, policies or similar rules. Such conditions of carriage can vary from airline to airline. The Customer warrants and represents that it understands that the use of the Goods may not be permitted by all airline conditions of carriage, policies or similar rules, and unconditionally releases, and holds harmless Fly LegsUp, and the Related Entities, from any complaint, demand, loss, or claim in that regard. Customers should make direct enquiries with the airline of their choice prior to booking;
- (g) the Customer unconditionally frees, releases, holds harmless and discharges Fly LegsUp, and the Related Entities, from any complaint, demand, loss, damage, claim or cause of action (including in contract, tort or under statute) (collectively, "Claim") arising in connection with the Goods in any way whatsoever;
- (h) the Customer indemnifies, and must keep indemnified, Fly LegsUp and the Related Entities from and against any Claim arising in connection with the Goods;
- (i) the Customer indemnifies and holds harmless Fly LegsUp, and the Related Entities, in respect of any and all loss, cost or expense (including legal costs on the indemnity basis and investigation costs) suffered by Fly LegsUp, or any of the Related Entities, in respect of a breach of the warranties set out in clauses 8.3(b) and/or 8.3(b); and
- (j) the Customer indemnifies and holds harmless Fly LegsUp, and the Related Entities, from any and all claims arising from death, disease, physical or mental

injury (including the aggravation, acceleration or occurrence of such injury), or the coming into existence, the aggravation, acceleration or occurrence of any other condition, circumstance, occurrence, activity, form of behaviour or state of affairs in relation to the Customer that is or may be harmful or disadvantageous or that may result in harm as a result of use of the Goods.

8.4 This clause 8 does not exclude or limit the application of any provision of any statute where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this clause to be void.

8.5 If the Customer is located outside Australia, the Customer warrants and represents to Fly LegsUp that they have obtained all necessary approvals, licences, permits and other authorisations required by law (if any) in relation to the importing and use of the Goods.

8.6 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9. DEFAULT

9.1 If an Event of Default occurs, the Customer forfeits any Purchase Price, or part thereof, paid pursuant to clause 4 and Fly LegsUp may, without prior notice to the Customer:

- (a) suspend delivery of Goods;
- (b) terminate the agreement between Fly LegsUp and the Customer;
- (c) make the Purchase Price immediately due and payable;
- (d) exercise its rights under clause 5.3.

9.2 If Fly LegsUp has or recovers possession or control of the Goods, Fly LegsUp may sell or otherwise dispose of the Goods in Fly LegsUp's absolute discretion and on its own account, but without limiting any of Fly LegsUp's rights arising as a consequence of the occurrence of any Event of Default.

10. COSTS AND EXPENSES

10.1 If Fly LegsUp:

- (a) incurs any cost or expense in connection with the exercise, or attempted exercise, of any of Fly LegsUp's rights under the Terms, or any other right of Fly LegsUp against the Customer; or
- (b) incurs or suffers any direct or indirect loss, damage or injury, whether general, special consequential, in connection with the occurrence of any Event of Default;

the amount of such cost, expense, loss, damage, debt, liability or injury is recoverable from the Customer by Fly LegsUp as a debt due, owing and payable to Fly LegsUp by the Customer.

10.2 Without limiting the generality of the preceding clause, the Customer must pay to Fly LegsUp on demand all costs, charges and expenses incurred (on the indemnity basis, including legal costs on a solicitor and own client, or indemnity, basis) by Fly LegsUp in enforcing or attempting to enforce all or any of its rights, powers or remedies under the Terms, at law or otherwise in connection with collecting or recovering (or attempting to do so) all or any money owing by the Customer to Fly LegsUp or the Goods.

11. FORCE MAJEURE

- 11.1 Fly LegsUp shall not be liable in any way to the Customer or be deemed to be in breach of the Terms if it fails to supply the total amount of Goods ordered by the Customer where the failure was due to a Force Majeure Event.
- 11.2 If a Force Majeure Event occurs, at Fly LegsUp's sole election,:
- (a) Fly LegsUp is entitled to supply a lesser amount of Goods to the Customer, that amount to be determined by Fly LegsUp;
 - (b) Fly LegsUp shall not be liable to supply the Customer with the balance of Goods at any time; and
 - (c) the agreement constituted by these Terms and the Order continues to apply in relation to the lesser amount of Goods.
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12. GENERAL

- 12.1 No modification, variation, representations, statements, conditions or agreements (including any statement by the Customer that the Customer's terms will apply) shall bind Fly LegsUp unless expressly agreed to in writing by Fly LegsUp
- 12.2 Subject to clause 12.5, these Terms cannot be replaced or varied, except by an instrument executed by Fly LegsUp and the Customer. A purported replacement or variation of these Terms in a manner other than that referred to in this clause has no effect between Fly LegsUp and the Customer.
- 12.3 A failure by Fly LegsUp to exercise any right under these Terms, or a delay in exercising any right, is not a waiver of, or variation to, that right. The partial exercise by Fly LegsUp of any right under these Terms does not prevent the complete or further exercise of that right.
- 12.4 Fly LegsUp may license or sub-contract all or any part of its rights and obligations under these Terms without the consent of the Customer.
- 12.5 Fly LegsUp reserves the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in such Terms, that change will take effect from the date on which Fly LegsUp notifies the Customer, including by way of publication on the Website.
- 12.6 Part or all of any of these Terms that are unenforceable or illegal are to be severed and will not affect the enforceability of the remaining provisions of these Terms.
- 12.7 These Terms are governed and construed in accordance with the laws applicable in the State of New South Wales, Australia, and Fly LegsUp and the Customer irrevocably submit to the non-exclusive jurisdiction of the courts of that State.