



# Sale Terms & Conditions

## 1. General Terms

- 1.1. These Sale Terms apply between Derlot Editions Pty Ltd T/A Derlot ABN 53 155 547 112 (us, our or we) and the Person named on a Quotation or Sales Order (you) regarding you buying from us the Goods or Services, on and subject to an Agreement.
- 1.2. If you do not accept these Sale Terms, then we will not process your Sales Order.
- 1.3. An Agreement will be on and subject to any special conditions set out by us in a Quotation, Sales Order or Sales Invoice, these Sale Terms and our Privacy Policy, whether you make your order over the phone, via email or through our Online Shop. Additionally, our Website Terms will also form part of that Agreement if you have made your order through our Online Shop.
- 1.4. No other terms and conditions will apply to the Agreement, including any you purport to make when placing an order with us.
- 1.5. An Agreement may only be cancelled or varied with our prior written consent.

## 2. Definitions and interpretation

- 2.1. In these Sale Terms unless the context otherwise requires:
  - a. Agreement means a contract between us and you for the sale and purchase of the Goods or Services on and subject to the terms and conditions referred to in clause 1.3.
  - b. Anticipated Delivery Date is deemed to be the greater of either your requested delivery date or our achievable delivery date.
  - c. Goods mean the goods (if any) agreed in the Agreement to be supplied by us to you.
  - d. Payment has the meaning given in clause 8.1
  - e. PPSR is the Personal Property Securities Act 2009 (Cth)
  - f. Quotation means the form, tender or quotation submitted by us to you regarding the Goods or Services
  - g. Sales Order means the schedule detailing the Goods or Services ordered on your behalf that have been confirmed by you and are to be delivered in accordance with these terms and conditions.
  - h. Sales Invoice means the sales invoice issued by us to you which is subject to these terms and conditions, and
  - i. Services mean the services (if any) agreed in the Agreement to be performed by us to you.
- 2.2. The expression Person includes an individual, the estate of an individual, a government body, a corporation, an association (incorporated

or unincorporated) and a statutory or other authority.

## 3. Quotations, Sales Orders and Sales Invoices

- 3.1. A Quotation is valid for 30 days or such other period as stated in the Quotation, unless it has been withdrawn by us.
- 3.2. A Quotation is not an obligation to sell, but is merely an invitation to treat. No contractual relationship arises from a Quotation until your order has been accepted by us in writing, and after you have made full payment of the deposit where required in accordance with clause 4.
- 3.3. Any special conditions specified in a Quotation, Sales Order or Sales Invoice will take precedence over these Sale Terms to the extent that they are inconsistent with these Sale Terms.
- 3.4. Every Quotation, Sales Order or Sales Invoice is subject to and conditional on obtaining any necessary import, export or other licence. If we cannot obtain any such licence, we reserve the right to cancel the Quotation or Sales Invoice, without liability to you, except we will promptly return to you any deposit you have paid us under a Sales Invoice.

## 4. Conformity to description

- 4.1. Whilst reasonable efforts are made by us to:
  - a. supply Goods with correct sizes, slight variations in size may occur
  - b. maintain consistency, variations from sample in colour and quantity may occur
  - c. supply material in accordance with the quality of any samples submitted to you or quoted for, the quality cannot be guaranteed, and
  - d. supply Goods to specific colours, variations from colour may occur (ie. colours in store may vary slightly from what you see on your monitor, depending on your monitor settings), and
  - e. we will not be liable to you for any such variations or inconsistencies.
- 4.2. Photographs, drawings, illustrations and any other particulars associated with or given in descriptive literature or a catalogue of ours, approximate the Goods or Services offered by us, and cannot be relied on by you.
- 4.3. Any performance data provided by us or a manufacturer is an estimate only and should be construed accordingly.

## 5. Price

Unless otherwise stated by us in writing, the prices quoted in a Quotation or Sales Order or set out in a Sales Invoice exclude delivery, installation, insurance in transit, packaging, crating, handling charges, agents' charges and any other

charge for a Good or Service.

## 6. Terms of payment

- 6.1. You must pay us in according to the payment terms set out in the Quotation or Sales Order.
- 6.2. If you order through our Online Shop, Payment in full is required.
- 6.3. If you are a non-account holder, we will require full Payment before we effect delivery of the Goods or performance of the Services.
- 6.4. If you are an account holder, we require payment of our invoices within 7 days of their date of issue unless otherwise specified in the Quotation or Sales Order.
- 6.5. We accept payment by Visa, MasterCard and American Express.
- 6.6. Any confidential and private information we receive in processing your payments under this Agreement will be held and used in compliance with our Privacy Policy.
- 6.7. Time for payment is of the essence, and failure to pay in time will entitle us, without prejudice to our other rights, to:
  - a. suspend any outstanding delivery
  - b. cancel the Agreement and seek damages for breach of contract and our costs of recovery, and/or
  - c. charge interest on the outstanding amount at 6% above the RBA cash rate from time to time each day from the date of payment until the date of payment, both before and after any judgment.
- 6.8. You must not make any deduction or withholding of any type from any Payment due to us, unless you have a valid court order requiring an amount equal to that deduction to be paid by us to you.

## 7. Shipment and delivery

- 7.1. On acceptance of an order, we may confirm the period of shipment or delivery and must notify you of any variation from the quoted period. Unless you object in writing within 7 days of that notification to you, the period of shipment or delivery notified to you will be the contractual period for shipment or delivery.
- 7.2. A quoted period for delivery will only start on the date you approve our drawings, specifications and finishes schedules (as applicable), or on the date you pay the deposit, whichever is the later. We may extend the quoted period if you request any variation to the drawings and finishes schedules after that date.
- 7.3. We will not accept any liability or responsibility for delays in the delivery of Goods. We will only be liable for liquidated damages for a delay in delivery if these have been stipulated in the Quotation, Sales Order or Sales Invoice, and are limited to 5% of the contract value of the Agreement.
- 7.4. Quotes of deliveries are given with best intentions but are not guaranteed. Time is not of the essence regarding the delivery of the Goods or the Anticipated Delivery Date, unless the Quotation, Sales Order or Sales Invoice expressly states otherwise. Time for delivery cannot be made of the essence by notice from you.
- 7.5. Delivery will be deemed to be made when the Goods are delivered to the place specified in the Quotation, Sales Order or Sales Invoice. If the customer has requested that goods be left

unattended, or with a third party representative no responsibility will be taken for loss or damage by Living Edge or their freight partners. We reserve the right to make part deliveries of any order and each part delivery will constitute a separate sale of Goods on these Sale Terms and may be invoiced separately. A part delivery of an order will not invalidate the balance of an order.

- 7.6. If for any reason you do not accept delivery of the Goods or performance of the Services when they are ready for delivery or performance, or we cannot deliver the Goods or perform the Services on time because you have not provided us with appropriate instructions, documents, licences or authorisations, we reserve the right to:
  - a. invoice you up to 80% of the total amount of the Sales Invoice, and
  - b. charge you a weekly storage fee that will be calculated in weekly increments (or part thereof) based on the rates listed at the bottom of this page, to accrue from 2 weeks after the Anticipated Delivery Date until the date of delivery.
- 7.7. If we attempt delivery of the Goods to you, and it is discovered that the delivery site is not ready for installation of the Goods, and as a consequence, we are required to return the Goods back to its own premises and subsequently re-deliver the Goods to you, we will be entitled to charge you a reasonable fee to recover the additional transport and storage costs.

## 8. Title and risk

- 8.1. Title to the Goods will not be transferred to you (or any financial institution and or agent facilitating the acquisition of the Goods by you) until the total purchase Price and any other sums due to us under these Sale Terms, including any late payment charge payable, has been duly paid in cleared funds to us (Payment).
- 8.2. Unless and until such Payment is so made:
  - a. you will hold the Goods and any money received by you in respect of the sale or disposal of them (or if any part of the whole thereof has been damaged or destroyed, any insurance or other compensation moneys received) on trust for us, and
  - b. you will store the Goods or hold such money in such manner as to show clearly that they are our property.
- 8.3. Until Payment has been made, you irrevocably authorise us at any time to enter onto any premises on which:
  - a. our Goods are stored or held to enable us to inspect the Goods and/or if you are in default under clause 6, to reclaim the Goods. You indemnify us and hold us as not liable in respect of any action taken pursuant to our rights under this Agreement, and
  - b. you have retained records concerning the Goods being held, so as to permit us to inspect and copy such records where necessary.
- 8.4. The risk in the Goods will pass to you on delivery. You accept the responsibility for insurance for the Goods from that time, but delivery does not make you the owner of the Goods until Payment in full.
- 8.5. Until final Payment is made in accordance with these Sale Terms, neither you nor any administrator appointed pursuant to any section of the Corporations Act will move any part of the

Goods from the location to which it was delivered by us nor will you sell or contract to sell, mortgage, charge, lease or otherwise dispose of the same or part with possession of the same.

- 8.6. We reserve the right to register any retention of title security interest in Goods on the PPSR, and you agree to provide all such assistance to us to enable us to make any such PPSR registration.

## 9. Inspection and Acceptance

- 9.1. You must inspect all Goods on delivery.  
 9.2. You must notify us if the Goods or Services are not in accordance with the Quotation, Sales Order or Sales Invoice within 48 hours of delivery or performance. Failing such notice and to the extent permitted by statute, the Goods or Services and their condition will be deemed to have been delivered or performed and accepted by you.

## 10. Cancellations and Returns

- 10.1. We will not accept the return of the Goods delivered to you if the Goods delivered have been accepted or deemed accepted by you or you wish to change your mind and cancel the Sales Order, unless we choose to do so in our sole discretion.  
 10.2. If we do accept a cancellation of your Sales Order, you agree to arrange a return of the Goods, at your cost and risk, to our nominated returns depot or store, as we nominate, and you agree to return the Goods in their original condition, in their original unopened and sealed packaging, accompanied by the original Sales Order docket receipt or another form of proof of purchase. You also agree that we are entitled to deduct from any refund of the Payment made by you, the cost of the original delivery and an amount that we reasonable believe reflects the loss to us in accepting the cancellation, including any storage costs and any mark down of the price of the Goods.  
 10.3. If, after you have made full payment of the deposit where required in accordance with the Quotation, Sales Order or Sales Invoice but before the Goods are delivered to you, you wish to change your mind and cancel the Sales Order and we do accept such cancellation, you agree that we are entitled to forfeit the whole of the deposit paid by you, and charge you with any additional amount that we reasonable believe reflects the loss to us in accepting the cancellation, including any transportation or storage costs and any mark down of the price of the Goods.

## 11. Warranties

- 11.1. Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law (ACL). You are entitled to a replacement or refund for a major failure and for 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.  
 11.2. In addition to all rights and remedies to which you may be entitled under the ACL and any other relevant legislation, we offer, on behalf of the manufacturers of the Goods, the respective manufacturers' express warranties for those Goods as outlined on the Warranties section of

our website (Express Warranties). The Express Warranties do not exclude, restrict or modify any of your statutory rights or remedies.

## 12. Important exclusions and limitations of liability

- 12.1. Subject to any Express Warranties and any guarantees we are required to provide under the ACL, and any other applicable laws that cannot be excluded, we will not be liable to you or anyone else, to the maximum extent permitted under law, for:
- a. any liability, damage, loss, cost or expense that is beyond the normal measure that you suffer or incur from a breach of this Agreement or that is consequential or following, immediate or eventual, flowing from a breach of this Agreement
  - b. expenses incurred by you due to any breach of the Agreement
  - c. a decision, action or inaction taken in reliance on any information provided by us or connected with our website, or
  - d. loss of profit, loss of revenue, loss of business, loss of opportunity, loss of production, loss of goodwill, loss of reputation, loss of contract, loss in replacing or restoring data, loss of anticipated saving, or loss for any financing costs or increase in operating costs, whether any such loss is direct or indirect, or normal or consequential, in nature (or on any other basis).
- 12.2. To the extent permitted by law, we will not be liable to you if:
- a. you use the Goods or Services after informing us they are defective
  - b. the defect in the Goods or Services arises because you failed to follow our or the manufacturer's instructions as to storage, installation, commissioning, maintenance or use of the Goods or Services
  - c. you remove any manufacturer's serial number
  - d. the damage or defect is not caused by a defect in workmanship or material, or
  - e. you alter or repair the Goods without our prior written approval.
- 12.3. To the extent permitted by law and subject to clause 10, our liability for any non-compliance with a statutory guarantee or loss or damage arising out of or in connection with the supply of the Goods or Services under this Agreement is limited to:
- a. In the case of Services:
    - a. the resupply of the Services; or
    - b. the payment of the cost of resupply of the Services; and
  - b. In the case of Goods:
    - a. the replacement of the Goods or the supply of equivalent Goods; or
    - b. the repair of the Goods; or
    - c. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - d. the payment of the cost of having the Goods repaired.
- 12.4. Clause 11.2 is not intended to have the effect of excluding, restricting or modifying:
- a. the application of all or any of the provisions of Part 5-4 of Schedule 2 to the ACL, or
  - b. the exercise of a right conferred by such a provision, or

- c. any of our liability in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 12.5. To the extent permitted by law, if we breach the Sale Terms, our liability to you (whether in contract, tort, breach of statutory duty or otherwise) will be limited to an amount which will not exceed the total amount paid by you to us under the Quotation, Sales Order or Sales Invoice, as up to the date of such a breach.
- 12.6. You agree and declare for our benefit that you have relied on your own skill and judgment in entering into the Agreement,