

## Terms and Conditions of Sale

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In these Terms and Conditions of Sale ("**Conditions of Sale**"), "we" or "us" means Chrystal and Co Pty Ltd T/A Comkit Online ABN 65 008 680 822 and "you" means the person, organisation or entity that purchased the products or related services from us.

Please read through these Conditions of Sale carefully as they form the agreement under which we will supply products and services to you. These Conditions of Sale apply to all sales made by us to consumers whether products and services are purchased online or over the telephone.

### 1. Orders

- 1.1. You may place an order with us over the telephone or by completing and submitting to us an online order form on our website. We may at our discretion accept or reject an order depending on a variety of factors, such as availability of the ordered products or our ability to validate payment for the products. You must not order products or services from us if you are under eighteen (18) years of age. We may, at our discretion, treat any order by a person under eighteen (18) years old as void.
- 1.2. Please choose your products carefully. Prices can change and so you should check the latest price on our website or confirm the price with our sales team on the phone before placing your order. It is your responsibility to check the order (including all pricing and product information) before you complete the online checkout process or before you place your telephone order.
- 1.3. We will let you have an "order reference number" via a confirmation email or over the phone once your checkout process or phone order is complete. However, if you are paying by credit card, debit card, EFTPOS or via the credit facilities provided by Rental Program, we will not complete your order until your payment has passed our internal validation procedures. Once your payment has been validated, we will process your order and let you have an order reference number. Please keep your order reference number safely.
- 1.4. Once we have given you an order reference number, a binding agreement will come into existence between you and us and only these Conditions of Sale will apply in relation to the supply of the ordered products. Subject to clause 2, no changes to these Conditions of Sale will be effective unless we both agree to the changes in writing. If you wish to cancel your order we ask that you advise us at least one (1) business day before your planned delivery date and you will receive a full refund subject to these Conditions of Sale.

### 2. Availability

- 2.1. We do our best to keep in stock most products that are advertised by us.
- 2.2. If, for any reason, we cannot supply a product you have ordered, we will let you know over the phone or contact you using the details provided by you at the checkout process to amend, cancel or put your order on backorder as agreed with you. If you choose to put your order on backorder, we will contact you to arrange for delivery once the product is available.

### 3. Price and Payment

- 3.1. The price payable for a product is the one set out on our website or advised by us over the phone at the time you place your order. We make every effort to ensure prices and product information on our website, catalogues or advertisements are correct and up-to-date. Prices for our products displayed on third party websites may not be correct and we are not bound by them.
- 3.2. We accept payment by VISA, MasterCard credit cards or via the credit facilities provided by our Rental Program.
- 3.3. Your credit card details will be encrypted to minimise the possibility of unauthorised access or disclosure. Whilst we employ the latest technology, we will not be responsible for any loss or damage (whether direct or indirect) suffered by you if your credit card is fraudulently used or is used in an unauthorised manner by a third party.

3.4. Your tax invoice will be sent to you when the items you have ordered are delivered. Your tax invoice is your proof of purchase and may be required for any warranty claims.

## 4. Delivery

- 4.1. You may request a date for delivery and we will do our best to arrange delivery on that date. However, some delivery areas have set delivery days. If we cannot deliver on your preferred day we will contact you as soon as possible.
- 4.2. If you need to change a delivery date or the delivery address, please contact our Customer Service Team at least 48 hours before the scheduled delivery date. If you are not available to take delivery on the agreed delivery date, you will be charged a delivery fee for each additional attempt for delivery. However, if we cannot deliver your full order at the time agreed you will not be charged for additional deliveries.
- 4.3. Subject to this clause 4, we will deliver to the delivery address specified by you when you placed your order on the agreed delivery date.
- 4.4. We may deliver the products via a range of delivery methods. All deliveries must be signed for, depending upon which delivery method we use:
- 4.4.1. delivery by one of our drivers - our driver will need to see a photo ID of the person who placed the order or that person's representative and will keep a record of that ID. If neither you nor your authorised representative is at the delivery address to take delivery, our driver will leave a notice in your letterbox or under your front door advising you of our contact details so that you can contact us to organise another delivery day;
  - 4.4.2. delivery by our contracted courier company or directly by the manufacturer - if neither you nor your authorised representative is at the delivery address to take delivery, the courier company or the manufacturer will leave a card with our contact details so that you can contact us to arrange another delivery time and date
  - 4.4.3. delivery by Australian Post - if neither you nor your authorised representative is at the delivery address to take delivery, an "Article Awaiting" card will be left at the delivery address and your order will be taken to the Australian Post Office suitable to store the product until you are able to go and pick it up. In these circumstances our obligation to deliver the product to you is satisfied when the "Article Awaiting" card is left at the delivery address; and
  - 4.4.4. unless expressly stated otherwise, the price quoted for delivery is for pavement delivery only. It does not include access through doorways, via stairs or elevators. Please let us know in advanced if resources and a price are required for other than pavement delivery
- 4.5. We cannot commit to an exact delivery time on the day of delivery. If delivery is by one of our drivers we will contact you on the morning of delivery before 10 am with an approximate delivery window. If delivery is after 11 am we will contact you again when the driver is approximately one hour away.

## 5. Title and Risk

- 5.1. Notwithstanding delivery of the products to you, title in the products will not pass to you until the later of delivery or your payment has been processed or otherwise received by us. If your payment is declined for any reason we reserve the right to reclaim the products from your possession, custody or control even if they have been delivered to you or moved from the delivery address. We reserve the right to keep or sell the products. Risk of loss, damage or deterioration to any products will pass to you on delivery.
- 5.2. You acknowledge and agree that clause 8.1 creates a purchase money security interest in the products which we are entitled to register as such under the *Personal Properties Securities Act 2009* (Cth) ("PPSA"). To the extent permitted under the PPSA, we each agree to contract out of the provisions listed in section 115 of the PPSA. You waive your right to be provided with verification statements under section 157 of the PPSA. We agree that neither of us will disclose to any third person information referred to in section 275(1) of the PPSA and that this is a confidentiality agreement for the purposes of section 275(6) of the PPSA.

## 6. Warranties and Limitation of Liabilities

- 6.1. Nothing in these Conditions of Sale limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law ("**ACL**") (or any liability

under them) which by law may not be limited or excluded. If you are a "consumer" under the ACL, the following notice applies to you:

*"Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law ("**Consumer Guarantees**"). You are entitled to a replacement or a 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."*

- 6.2. Your product may come with a manufacturer's warranty. The manufacturer's warranty is in addition to but may overlap with any rights and remedies you may have under applicable law, including any Consumer Guarantees. If you are not considered a "consumer" within the meaning of the ACL, the manufacturer's warranty may be your sole remedy. However, you should check the manufacturer's warranty carefully as many manufacturers' warranties will not apply in domestic setting. If you would like to make a claim under the manufacturer's warranty, please contact our Customer Service Team. Please refer to clause 11 if you need to arrange for returning the goods to us.
- 6.3. Subject to this clause 9, and to the extent permitted by law:
  - 6.3.1. all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Conditions of Sale are excluded;
  - 6.3.2. we will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, damage to goodwill, loss of data (including loss of data stored on any media contained within electronic or computing products), arising out of or in connection with the products, the services or these Conditions of Sale (including as a result of not being able to use the products or services or the late supply of products or services), or the need to recover, re-program or reproduce any program or data stored in or used with the products purchased from us, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise; and
  - 6.3.3. our total liability arising out of or in connection with the products, the services or these Conditions of Sale, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of products and services under these Conditions of Sale.
- 6.4. Where by law we are unable to exclude terms, guarantees, warranties, representations or conditions but are able to limit them, to the extent permissible by law we limit our liability for any breach, at our option, to the repair or replacement of products, or payment of the cost of repairing or replacing the products or in the case of services, to supplying the services again or the cost of having the services supplied again.
- 6.5. To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance or offer, invoice or other documents or information issued by us will be subject to correction without any liability on our part.

## **7. Returns, Refunds and Exchanges**

- 7.1. In addition to your rights under clause 6, we will gladly accept return of products and issue refunds, subject to the following and payment of a non-refundable collection fee of \$50 (inclusive of GST) or the amount of the original delivery fee, whichever is greater:
  - 7.1.1. if your product remains boxed and unopened you may contact our Customer Service Team within 30 days of delivery to arrange for it to be returned at your cost;
  - 7.1.2. if your product has been unboxed but otherwise is as new and have not been used you may contact our Customer Service Team within 14 days of delivery to arrange for it to be collected. You will have to pay a restocking fee of minimum 30% of the purchase price to cover our return costs
- 7.2. Subject to clause 9, we will not accept for return any product that has been damaged, used or installed or where you have attempted to install it, or if your product is custom-made or is a special buy product.
- 7.3. If your product is eligible for return pursuant to clause 6, please contact our Customer Service Team to arrange for return.

- 7.4. You must adequately package any product you are returning to ensure that it is not damaged during return delivery to our warehouse. All original items including packaging must also be returned.
- 7.5. If you are entitled to a refund, we will only give you the refund once we have received the product at our warehouse and inspected it and assessed whether it is eligible for a refund under these Conditions of Sale. Any refund we make will be by the same payment method used to purchase the product.

## 8. Repair of Products

- 8.1. If you return a product to us for repair (or replacement) and the product is capable of retaining user generated data, the repair (or replacement) of the product may result in the loss of the data. User generated data include files on equipment with touch screens and on-board computers. We will not be responsible for any data you may leave on the product and we require you to back up your data before returning a product to us for repair.

## 9. Force Majeure

- 9.1. We will not be liable for any delay or failure to perform our obligations under these Conditions of Sale if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 3 months, we may terminate our agreement with you by giving you 5 business days' written notice.

## 10. General

- 10.1. These Conditions of Sale form the entire agreement between you and us and, unless expressly agreed to in writing by us no terms or conditions of yours, including any Terms or Conditions printed or referred to in your offer to purchase or order (if any) will be binding on us or have any legal effect.
- 10.2. We may change any provision in these Conditions of Sale without notice so we advise that, even if you are a frequent purchaser from us, you check these Conditions of Sale whenever you want to purchase products from us. Any change of these Conditions of Sale will only apply to future orders. None of our agents or employees or any third parties have any authority to change these Conditions of Sale.
- 10.3. We reserve the right to refuse supply of the products or services ordered by you, terminate our contract with you or terminate your account with us, and to remove or edit content on our website at our sole discretion and without incurring any liability to you.
- 10.4. You must not assign any rights and obligations under these Conditions of Sale whether in whole or in part without our prior written consent.
- 10.5. Any notice in connection with these Conditions of Sale will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the party to whom such notice is intended to be given or to such other address, email address or facsimile number as may from time to time be notified in writing to the other party.
- 10.6. If any provision of these Conditions of Sale is invalid, illegal or unenforceable, these Conditions of Sale take effect (where possible) as if they did not include that provision.
- 10.7. Please refer to our [Privacy Policy](#) to see how we collect, use and protect your personal information.
- 10.8. Any failure by a party to insist upon strict performance by the other of any provision in these Conditions of Sale will not be taken to be a waiver of any existing or future rights in relation to the provision.
- 10.9. These Conditions of Sale are governed by the laws of Western Australia. The parties each agree to submit to the non-exclusive jurisdiction of the courts of Western Australia.

## Contact us

If you need to contact us for any reason, please do so using the contact details below:

**Customer Service Team**

**Telephone:** 1300 228 375