

POWERSELLER STANDARD MERCHANT TERMS AND CONDITIONS OF SALE

Each Merchant has adopted the following Merchant Terms and Conditions of Sale as their standard terms and conditions for all product sales conducted by them via the PowerSeller website.

Merchant Terms and Conditions of Sale

In these terms and conditions of sale (**Terms**) the word 'Buyer' means the person that offers to buy a product via the PowerSeller platform and the term 'Merchant' means the person that agrees to sell a product to the Buyer.

1 Binding Contract

- 1.1 These Terms together with an order placed by the Buyer via the PowerSeller platform and the order identification number provided to the Buyer constitute the entire contract between the Buyer and the Merchant for the supply of products.
- 1.2 The parties to this contract acknowledge and agree that:
 - (a) neither PowerSeller, nor any related party of PowerSeller are a party to this contract; and
 - (b) they each have a separate agreement which governs the agreement between them and PowerSeller.
- 1.3 The Buyer offers to purchase products from the Merchant via the PowerSeller platform by completing and submitting an order.
- 1.4 The Merchant accepts the offer by the Merchant providing the Buyer with an order identification number.
- 1.5 Subject to clause 1.6, once an order identification number is provided a binding contract is formed.
- 1.6 If the Buyer is under eighteen years of age, no contract is formed. The Merchant is not obliged to sell products to a minor. If the Merchant suffers any damage or other losses as a result of a transaction entered into by a minor, the Merchant reserves the right to seek compensation for such losses from the parents or guardians of the minor who caused any transactions to be entered into with the Merchant via the PowerSeller platform.

2 Processing your Order

- 2.1 When a Buyer completes and submits an order through the PowerSeller checkout system, an order identification number will be issued to the Buyer.
- 2.2 Once an order has been processed and payment received the Buyer may print an order confirmation via POWERSELLER. The Merchant will send the Buyer a copy of the order confirmation and a Tax Invoice for the purchase price of the products and GST with the products.
- 2.3 The Merchant reserves the right to:
 - (a) refuse service or supply of the products;
 - (b) terminate the contract; or
 - (c) remove or edit content from its PowerSeller online shop at its sole discretion.
- 2.4 If the Merchant cannot process an order after receiving payment, the Merchant will provide notice to the Buyer of this fact.

3 Payment Methods and Processing

- 3.1 Orders placed on weekends or national public holidays will be processed within 1 business day of the order being placed.
- 3.2 Business days are Monday to Friday, excluding national public holidays.
- 3.3 The tax invoice issued to the Buyer by the Merchant is the Buyer's proof of purchase and is required for any product return claims or warranty claims.

4 Pricing

- 4.1 All purchase prices stated include GST unless otherwise stated.
- 4.2 The Merchant reserves the right to modify prices published on its PowerSeller online shop at any time.

5 Availability

- 5.1 All stock availability representations (graphical or text) on the Merchant's PowerSeller online shop are accurate as of the Merchant's last known stock level with the manufacturer and is subject to change without notice.
- 5.2 Customers will be notified if products are on backorder.

6 Delivery

- 6.1 Delivery of all products purchased on the Merchant's PowerSeller online shop will be delivered by shipping agents and carriers contracted by PowerSeller. PowerSeller is responsible for product delivery.
- 6.2 Once the Buyer has selected their preferred method of delivery, the Merchant must make the product available for shipping carrier pick-up within 1 business day from the date of the order being placed by the Buyer.
- 6.3 The shipping carrier will deliver each ordered product/s to the place of delivery designated by the Buyer.
- 6.4 Delivery of each ordered product/s can take up to 10 business days from the date payment is received.
- 6.5 Estimated delivery times may vary due to circumstances beyond the control of the Merchant and PowerSeller.
- 6.6 The estimated delivery times for products are during business hours (9am to 5pm) Monday to Friday excluding national public holidays.

7 Title and Risk

- 7.1 Subject to 7.2, title to and risk in the products will pass to the Buyer upon delivery.
- 7.2 Title to those products, which are software, shall remain with the Merchant or otherwise with the applicable licensor(s) at all times.

8 Cancelled Orders

- 8.1 An order cannot be cancelled by the Buyer once the Merchant provides the Buyer with the order identification number.
- 8.2 No refunds, credits or replacements are offered if a Buyer has changed its mind about the ordered products, makes an incorrect choice, or fails to verify and accurately provide information when placing an order.

9 Product Returns

- 9.1 This clause 9 is subject to the PowerSeller Buyer Protection policy as published by PowerSeller from time to time on the PowerSeller website. If there is any inconsistency between this clause and the PowerSeller Buyer Protection policy, the latter prevails to the extent of the inconsistency.
- 9.2 In this clause 9 "Faulty Product" means a product that does not work correctly when first taken from its packaging or if it shows signs of failure within 14 days of delivery.

- 9.3 If the Buyer receives a Faulty Product, the Merchant will arrange for it to be repaired or replaced. A refund is only available if the Faulty Product is no longer available from the Merchant.
- 9.4 The Merchant is not obliged to give a refund if the Buyer changes its mind or makes a wrong product selection.
- 9.5 The Merchant is not obliged to process any product return unless the Buyer can provide a tax invoice as proof of purchase.
- 9.6 Faulty Product damaged in transit must be reported to the Merchant within 24 hours of receipt of the Faulty Product.
- 9.7 If the Buyer receives a product that they believe to be a Faulty Product they must immediately contact the Merchant who may provisionally determine whether the product is a Faulty Product. The Buyer has 14 days from the date of delivery to report a Faulty Product. Any Faulty Products reported after this time will be dealt with at the discretion of the Merchant.
- 9.8 Where a product is provisionally determined to be a Faulty Product by the Merchant, the Merchant will:
 - (a) arrange to replace the Faulty Product; and
 - (b) pay for the replacement product to be re-dispatched.
- 9.9 If the product is deemed by the Merchant NOT to be a Faulty Product, the Merchant may, in its absolute discretion, refuse to replace the Faulty Product or offer a refund.
- 9.10 The Merchant reserves the right to test any returned products. If the product testing reveals that the returned product is not defective, the Merchant may in its absolute discretion impose a handling and administration fee of up to \$50 on the buyer.
- 9.11 Products must be returned by the Buyer whenever the Merchant agrees to replace a Faulty Product or provide the Buyer with a refund. When a product is returned to the Merchant, the Buyer must ensure that all original items including packaging are returned.
- 9.12 It is the responsibility of the Buyer to ensure that products are adequately packaged to ensure that they are not damaged during return delivery to the Merchant's premises.
- 9.13 When a replacement product is arranged:
 - (a) a replacement for the same product ordered will be delivered at the Merchant's expense after they have received the original Faulty Product; and
 - (b) the delivery time for the replacement product may be the same as stated for the original product.
- 9.14 Replacement products are provided with the same warranty as the original product.
- 9.15 When a refund is arranged:
 - (a) refunds include delivery and associated costs for the Faulty Product;
 - (b) no refund will be processed until the Merchant has received the Faulty Product from the Buyer; and
 - (c) refunds will only be issued to the same credit card or debit card used for the original purchase.

10 Manufacturer's Warranties

Buyers should contact the product manufacturer for all manufacturer warranty claims (if applicable).

11 Computer Hardware & Software (if applicable)

- 11.1 The Merchant is not liable for any damage to or loss of any programs, data, or other information stored on any media contained within electronic or computing products.

- 11.2 In relation to any computing media product, or any computing hardware product or computing part contained within a product, the Merchant will not be responsible for direct, special, incidental or consequential damages resulting from any breach of warranty or condition, or under any other legal claim, including but not limited to lost profits, downtime, goodwill, damage to or replacement of equipment and property, any costs of recovering, reprogramming, or reproducing any program or data stored in or used with hardware purchased from the Merchant.
- 11.3 Where a computing product needs to be returned to the Merchant for replacement or a refund, the Merchant will in no manner whatsoever be responsible for any data that a Buyer may leave on the computing product or software.
- 11.4 Recovery and reinstallation of system and application software and user data are not covered under any warranty.
- 11.5 All software provided is subject to the terms and conditions of the license agreement relating to that software. The Buyer acknowledges its obligations to abide by such license agreements. The Buyer acknowledges that the Merchant does not warrant any software under these Terms. In addition to any rights the Buyer may have under any law, all software is warranted in accordance with the license agreement that governs its use.
- 11.6 All rights, title or interest in respect of the intellectual property rights in the software remain with the Merchant or otherwise with the licensor of the software at all times.

12 Merchant Liability

- 12.1 The Merchant shall not be liable for any loss or damage suffered and consumer rights are limited to those set out in these Terms and under statute.
- 12.2 To the extent permitted by law the Merchant's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms.
- 12.3 The Buyer will indemnify the Merchant and keep it fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Buyer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms.
- 12.4 To the extent permitted by law, the Merchant and Buyer agree that the Merchant will not be liable for products not being available for use, or for data or software which is lost, corrupted, deleted or altered. The Merchant shall not be liable to the Buyer for any incidental, indirect, special or consequential damages, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of business, loss of contracts, loss of goodwill, loss arising out of business interruption, loss arising out of or in connection with pollution of contamination arising out of or in connection with the purchase, use or performance of products or services, even if the Merchant has been advised of their possibility.
- 12.5 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 the Merchant shall be subject to correction without any liability on the part of the Merchant.
- 12.6 Under the Australian Consumer Law, where implied conditions and warranties cannot be excluded, any liability of the Merchant for breach of such conditions and warranties shall be limited, at the option of the Merchant, to:
 - (a) the replacement of the product(s) or the re-supply of the same product(s); or
 - (b) the payment of the cost of replacing the product(s) or of acquiring equivalent Product(s).

13 General

- 13.1 The Buyer must not assign any rights and obligations under these Terms whether in whole or in part without the Merchant's prior written consent. Any unauthorised assignment shall be deemed null and void.
- 13.2 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provisions in question shall not be affected thereby.
- 13.3 No failure or delay on the Merchant's part in exercising any power or right under these Terms operates a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.
- 13.4 The contract cannot be changed unless agreed to in writing or by e-mail.
- 13.5 The Merchant shall not be liable for any delay in performing any of obligations under these Terms if such delay is caused by circumstances beyond the reasonable control of the Merchant. The Merchant shall be entitled to a reasonable extension of time for the performance of such obligations.