

TRADING TERMS AND CONDITIONS

The following trading terms and conditions, as amended from time to time ("**Trading Terms**"), shall apply to all goods sold by Outdoor Performance Pty Ltd ACN 075 660 927 to its Customer. These trading terms and conditions do not restrict or modify any conditions, warranty, guarantee, right or remedy implied by law which, by the terms of the law cannot be excluded, restricted or modified.

- 1. INTERPRETATION**

In these conditions:-

 - (a) "Company" means Outdoor Performance Pty Ltd ACN 075 660 927 of 30 Depot Road, Banyo, Queensland, Australia.
 - (b) "Customer" means the Customer of Goods.
 - (c) "Goods" means the goods and merchandise supplied by the Company from time to time.
- 2. APPLICATION AND VARIATION**

These conditions shall prevail over all conditions of the Customer's order to the extent of any inconsistency, and may only be waived or varied in writing signed by the Company.
- 3. PRICES**
 - 3.1 The price for the Goods shall be the current wholesale price charged by the Company at the date of purchase, unless otherwise agreed between the Company and Customer.
 - 3.2 The Company may vary any prices prior to delivery without notice to the Customer.
- 4. COMPANY'S QUOTATION**
 - 4.1 Unless previously withdrawn, the Company's quotations are open for acceptance within the period stated therein or, when no period is so stated, within 60 days after the quotation date. The Company reserves the right to refuse any order.
 - 4.2 All quoted prices are exclusive of Goods and Services Tax (GST) where applicable and the Customer shall pay the GST in addition to the quoted price.
- 5. SHORTAGE / DISCREPANCIES**

The Customer waives any claim for shortage or discrepancies of any Goods delivered if a written and detailed claim has not been lodged with the Company within 7 days from the date of receipt of the Goods by the Customer.
- 6. DELIVERY**
 - 6.1 The Company is not responsible for any loss or damage to the Goods in transit after dispatch from the Company's premises. All carriers are deemed to be agents of the Customer.
 - 6.2 Any delivery times made known to the Customer are estimates only and the Company shall not be liable for late delivery or non-delivery including for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery of the Goods.
 - 6.3 The Goods may be delivered in instalments and each delivery shall be regarded as a separate contract.
 - 6.4 The Company may refuse to deliver Goods to the Customer where the Customer is overdue on any payment owing to the Company.
 - 6.5 If the Company is unable to deliver Goods due to any cause beyond its control it may suspend delivery or cancel the Customer's order without incurring any liability for loss or damage suffered by the Customer. The Customer may not cancel or refuse delivery of any suspended order without the prior written consent of the Company.
 - 6.6 The Company may levy an additional freight charge where urgent delivery is requested by the Customer.
 - 6.7 A freight charge is applicable for orders of Goods less than an amount as determined by the Company from time to time and listed in the Company's schedule of charges issued to the Customer.
- 7. PAYMENTS**
 - 7.1 The Customer will pay the Company the purchase price of the Goods no later than 14 days after the end of the month on the date of the invoice. It is the Customer's responsibility to ensure that the appropriate funds are delivered by the due date.
 - 7.2 A settlement discount of 2.5% is available on payment received within 7 days from invoice date.
 - 7.3 Any credit card payments will incur a 3% surcharge.
 - 7.4 If any cheque issued by the Customer in payment for the Goods is dishonoured, the Company may refuse to supply any further Goods, until satisfactory payment is received in full. Any dishonour fee(s) charged to the Company will be recoverable in full from the Customer.
 - 7.5 Any costs incurred by the Company in collecting monies due and payable (including, without limitations, the fee of any mercantile agencies or solicitors appointed by the Company) will be recoverable in full from the Customer.
 - 7.6 If the Customer has not paid for any goods on the due date for payment, without prejudice to any other right or remedy of the Company, a late payment fee of 15% per annum calculated daily will be charged on unpaid amounts from the due date for payment to the date of actual payment.
- 8. CANCELLATIONS**

No order may be cancelled or Goods returned except with the Company's prior written consent and on terms satisfactory to the Company including, without limitation, that the Customer indemnify the Company against all loss suffered by the Company in cancelling an order or returning Goods (as the case may be).
- 9. WARRANTIES AND/OR GOODS RETURNED**
 - 9.1 A Return Authority Number ("RAN") must be obtained before returning any product.
 - 9.2 A RAN is required for both faulty and non-faulty product claims.
 - 9.3 A RAN is obtained by contacting the Outdoor Performance Return Centre on 1800 030 895 .
 - 9.4 A RAN will be allocated for any merchandise shipped as a result of an error made by the Company, provided that the request for such returns is made within 7 days of the invoice date.
- 9.5 The Company will not accept returns unless they are in a clean state, free of Customer price stickers and other Customer in-store labelling.
- 9.6 The Company is not obliged to accept unauthorised returns, which may be returned to the Customer at the Customer's expense.
- 9.7 Customers are responsible for returning product, the cost of which may be credited to the Customer's account if the product proves to be faulty.
- 10. RECOMMENDED RETAIL PRICE**

The recommended retail prices published by the Company may change from time to time at the Company's discretion.
- 11. PERFORMANCE**
 - 11.1 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract for the sale of the Goods.
 - 11.2 Without limiting sub clause 11.1, any performance figures given by the Company are estimates only. Other than where liability is imposed by law, the Company shall be under no liability for damages for the Goods failure to attain such figures unless specifically guaranteed in writing, and any such written guarantee shall be subject to the recognized tolerances applicable to such figures.
- 12. RETENTION OF TITLE**
 - 12.1 Legal ownership of Goods shall remain with the Company until the Company has received full payment for all Goods supplied by the Company to the Customer.
 - 12.2 Prior to the transfer of title of the Goods from the Company to the Customer, the Customer shall be bailee of the Goods for the Company only and the Customer expressly acknowledges that it owes a fiduciary duty to the Vender not to deal with the Goods contrary to the Trading Terms.
 - 12.3 From the despatch of the Goods by the Company to the Customer, the Goods are at the Customer's risk.
 - 12.4 The Company will have the right to retake possession of any Goods which have not been paid for in accordance with the Company's terms of payment.
 - 12.5 The Customer irrevocably gives the Company and its agents the right to enter upon the Customer's premises (whether occupied by the Customer, or another or unoccupied) without giving notice and to search for and remove any of the Goods and to keep and re-sell them without in any way being liable to the Customer or to any person or company claiming through the Customer, and the Customer will indemnify and keep indemnified the Company in respect of any claim arising out of any act of the Company under this clause 12.5.
 - 12.6 Subject to the Trading Terms, the Company consents to the Customer reselling the Goods in accordance with the Trading Terms in the ordinary course of the Customer's business.
- 13. WARRANTIES, GUARANTEES AND CONDITIONS**
 - 13.1 This clause shall apply where the Customer is not a consumer as defined in the Trade Practices Act (Australia) if applicable, or the Consumer Guarantees Act (New Zealand) if applicable.
 - 13.2 All representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) not expressly included in the Trading Terms are hereby expressly excluded.
 - 13.3 If the Company shall be under any liability whatsoever to the Customer then whether such liability be in contract, tort or otherwise and notwithstanding any relief or remedy to which the Customer may be entitled to under the Contractual Remedies Act 1979 (New Zealand) if applicable, any other applicable legislation, or at law or in equity, such liability shall be limited to the price at which the Goods are supplied to the Customer or the actual loss or damage suffered by the Customer whichever shall be the lesser.
 - 13.4 Under no circumstances will the Company be liable for indirect or consequential loss of any kind whatsoever.
 - 13.5 Except as otherwise provided by law, no action or claim may be brought against the Company unless notice of such claim is brought within 30 days of dispatch of the Goods to the Customer and the Company shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of accrual of any cause of action.
- 14. LIMITATION OF LIABILITY**

No liability whatsoever (except as provided by law) will be accepted by the Company for any direct or indirect loss or damage (including loss of forecasted or actual revenue or profits, loss of livelihood or goodwill or unanticipated incurring of debt) relating to delivery of Goods, account suspension or closure or any other act or omission on the part of the Company or any of its servants, agents or contractors. Where liability is accepted, it is limited (except as provided by law) to the payment of the cost of having product re-supplied.
- 15. GOVERNING LAW**

So far as the law allows, the Trading Terms shall be governed by and construed in accordance with the law of Queensland, Australia, and the parties agree to submit to the jurisdiction of the Courts of that jurisdiction to the exclusion of the Courts of any other jurisdiction which may otherwise be available.
- 16. SEVERABILITY**

Any provision of the Trading Terms which is invalid in any jurisdiction is invalid in that jurisdiction to that extent only, without invalidating or affecting the remaining provisions of the Trading Terms or the validity of that provision in any other jurisdiction.