

Terms and conditions of sale

1. General

Unless the context otherwise requires:

Agreement means the agreement between Cheeky devil and customer for the supply of goods by cheeky devil to customer and shall be constituted in its entirety by these terms and conditions of sale and, if any, Cheeky devil quotation and the confidential credit application and agreement;

Australian Consumer Law means Schedule 2 of the Competition and consumer Act 2010;

Customer means the party to whom Cheeky devil has agreed to supply goods pursuant to the agreement;

Goods means the goods and/or services agreed to be supplied by Cheeky devil and purchased by consumer pursuant to the agreement.

GST has the meaning given by the A new tax system (Goods and Services Tax) Act 1999 (Cth) or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that act;

Guarantee means the guarantee document provide by Customer or Customer's directors, shareholders or principals to Cheeky Devil to guarantee the performance of the Agreement by customer;

Proprietary information means any and all information and intellectual property relating to the goods or installation or operation of the goods including but not limited to patents, designs, drawing, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trade marks and copyright in such information and intellectual property;

Purchase Order means the transaction through either PayPal, credit card, direct debit or other payment means by Customer to Cheeky devil for the supply of goods.

2. Purchase orders

- (a) In order to purchase certain Goods, Customer must place with Cheeky devil a purchase order they will be given an order number, Cheeky devils full description of the goods to be purchased, the delivery date, delivery point and any other information required by Cheeky devil at Cheeky devil's discretion.
- (b) A contract shall be formed by and upon Cheeky devil accepting from customer a purchase order pursuant to the clause immediately above and each contract shall be governed by the agreement.
- (c) The agreement shall take precedence over any other representations, agreements, arrangement or understandings relating to the goods and any matter in connection with the goods.
- (d) Any condition or terms of purchase submitted by customer deviating from or inconsistent with the agreement will not bind Cheeky devil, notwithstanding any statement by customer in its purchase order that its terms and conditions prevail over the agreement.

In no case shall Cheeky devil have any liability to customer as a result of termination, but customer shall pay to Cheeky devil the purchase price of goods actually supplied under the agreement.

3. Payment of purchase price

- (a) Unless otherwise agreed in writing, Cheeky devil accepts orders subject to the condition that customer agrees to pay the purchase price appearing on Cheeky devil price list for those goods current as at the date that Cheeky devil accepts the purchase order.
- (b) A copy of Cheeky devil publicly available price list for the goods is available on the website. All prices on Cheeky devil price list are subject to alteration without notice.
- (c) The total purchase price, unless other wise stated in the purchase order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation cost, cost and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by customer or reimbursed by customer to Cheeky devil, as Cheeky devil may elect.
- (d) Payment of the purchase price must be made in full at time of order. If goods have been sent with no payment being made or having been retracted by credit dispute, chargeback or any other avenue the customer will have 7 days only to make payment otherwise you allow your details to be passed onto debt collection agency. Payment will be followed through as far as court proceedings at Cheeky devil's sole discretion.
- (e) Customer must not set off any money owing or alleged to be owing by Cheeky Devil against money due by customer to Cheeky devil.
- (f) If customer does not pay money by due date for payment, without prejudice to any other rights which it may have against customer.
Cheeky devil may require customer to pay on demand interest at the RBA cash rate target effective from time to time plus 5% per annum calculated from the due date on daily balance of amounts unpaid. Or it will be forwarded to our debt collection agency.
- (g) In the event of any default in payment, the customer is liable to Cheeky devil for all cost, expenses or losses incurred by Cheeky devil as a result of the customer's failure to pay (including without limitation the cost of any legal action, debt collection cost, search costs and legal costs on a solicitor and own client basis). The customer will immediately on demand pay to Cheeky devil all such amounts (on an indemnity basis).

4. Cancellation of orders

Customer may not alter or cancel a purchase order without Cheeky devil prior written consent. If Cheeky devil agrees to alter or cancel the purchase order, customer will indemnify Cheeky devil against any loss, damage and expenses incurred by

Cheeky devil in relation to the alteration or cancellation of that purchase order, including the cost of return freight, return shipping to the warehouse of origin, items purchased from third parties for inclusion in the goods and all other costs incurred by Cheeky devil in the execution or part execution of the goods and including compensation payable to any of Cheeky devil suppliers and loss of profit.

5. Return of Goods and credits

- (a) Customer is deemed to have accepted the goods unless it makes a claim in accordance with the clause immediately below.
- (b) Customer may reject any goods that were wrongly supplied or oversupplied by notifying Cheeky devil of the claim and providing full particulars of the claim in writing within 5 days of receipt of those goods Cheeky devil may dispute any such claim.
- (c) Goods referred to in the clause immediately above may be returned to Cheeky devil for credit if all of the following is complied with:
 - i. The goods are returned to Cheeky devil premises by prior arrangement and with Cheeky devil's written approval within 7 days of delivery, at no cost to Cheeky devil, unless delivered as the result of an administrative error by Cheeky devil, in which case Cheeky devil will bear the cost of return.
 - ii. The goods are accompanied by a dispatch note stating Cheeky devil original invoice number and reason for return, and
 - iii. The goods are returned in an unsoiled, undamaged and resalable condition in their original packing.
- (d) Customer must not return any goods to Cheeky devil unless it has complied with the two clauses immediately above and has done all things necessary to permit Cheeky devil to examine the goods to Cheeky devil's satisfaction within that period.

6. Delivery, storage and use

- (a) All quoted delivery or consignment dates are estimates only. Cheeky devil is not obligated to meet such dates and will not be liable to customer by reason of delays cause by any reason whatsoever.
- (b) Cheeky devil is deemed to have delivered the goods when the goods are made available to customer for physical collection by or on behalf of customer at customer's nominated delivery point (Delivery). Any unloading or loading shall be the customer's responsibility, unless Cheeky devil otherwise agrees in writing.
- (c) Without limiting any other provision of the agreement failure by customer to pay any instalments, or any other amounts when due, will entitle Cheeky devil to withhold or delay delivery of any remaining goods ordered.
- (d) If customer is unable to collect the goods at customer's nominated delivery point on the delivery day, Cheeky devil may (at its option and without limiting its other rights and remedies) arrange suitable storage of the goods, whether at its premise or elsewhere, and customer must pay or reimburse all cost and expenses of storage, insurance, demurrage handling and other charges associated with such storage.
- (e) The customer acknowledges that it has sole responsibility to confirm the suitability of the goods for their intended purpose and that Cheeky devil makes no representation or warranty in this regard.

7. Title and Risk

- (a) Title to the goods shall remain with Cheeky devil until all monies owing by customer to Cheeky devil for the goods have been paid in full.
- (b) Until such time as customer has paid Cheeky devil in full goods, Customer shall:
 - i. Store the goods separately and mark them so that they are clearly and easily identifiable as Cheeky devil property and, if Cheeky devil requests, inform Cheeky devil of the location of the goods;
 - ii. Hold the goods as bailee for Cheeky devil, subject to customer's right to deal with the goods in the ordinary course of customer's business (Bailment)
 - iii. Indemnify Cheeky devil against any claim arising out of possession, use or disposal of the goods by customer or repossession or attempted repossession by Cheeky devil.
- (c) If:
 - i. A payment is not made in accordance with the Agreement.
 - ii. Customer commits any other breach of the Agreement:
 - iii. Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent. Then Cheeky devil may at any time, without notice to customer and without prejudice to any other rights that it may have against.
Customer:
 - i. Terminate the agreement and the bailment,
 - ii. Suspend some or all its obligations to customer under the Agreement; and/or
 - iii. Enter upon any premises owned or occupied by customer where Cheeky devil believes the goods may be stored and repossess the goods (including uninstalling the goods) without being liable for any damages caused.
- (d) If the customer sells the goods before payment in full to Cheeky devil, or uses the goods in a manufacturing process of its own or some third party, customer holds the proceeds on trust for Cheeky devil in respect of those goods, and must keep such proceeds in a separate account until the liability to Cheeky devil is discharged and must immediately pay that amount to Cheeky devil.
- (e) The risk in the goods passes to customer at the time of delivery.

- (f) Cheeky devil reserves the right to register a security interest for the purpose of the Personal Property Securities Act 2009, as amended. The customer agrees to provide Cheeky devil with such information that Cheeky devil requires in order to register a security interest at any time. The customer will immediately advise Cheeky devil of any changes which may affect Cheeky devil security interest.

8. Insurance

Customer must keep the goods insured against all risks for goods of that kind from the time the risk in the goods passes to customer until the time that title to the goods passes to customer. Customer holds the proceeds of the insurance on trust for Cheeky Devil up to the amount it owes Cheeky devil in respect of those goods, and must keep such proceeds in a separate account until the liability to Cheeky Devil is discharged and must immediately pay that amount to Cheeky devil.

9. Warranty and Limitation of liability for Goods

- (a) Other than what is provided for in this clause 9, Cheeky devil makes no warranties or representation to customer. The warranty in this clause 9 is in addition to any other rights or remedies which may be available to customer at law.
- (b) Cheeky devil warrants the goods to be free from defect in workmanship and materials under normal use and service for a period of 30 days only. This warranty does not cover cost of claiming under this warranty or of recovery of the goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to comply with Cheeky devil or the original manufacturer's instructions (including any installation, operating or maintenance instructions or manuals), failure to perform required preventative maintenance or normal wear and tear.
- (c) During the warranty period, to the extent permitted by law, Customers sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as Cheeky devil may elect) any such defective goods at Cheeky devil expense. The replacement or repaired goods shall be covered by the unexpired portion of the warranty period in respect of the original goods or for a period of 30 days, whichever is the greater.
- (d) For equipment forming part of the goods, which equipment is not manufactured by Cheeky devil, the original manufacturer's warranty will apply. Cheeky devil liability for such equipment shall not exceed the liability of the manufacturer.
- (e) In respect of goods that are not ordinarily acquired for personal domestic or household use or consumption, the liability of Cheeky devil for a breach of any condition or guarantee applied by law is limited at Cheeky devil option to the repair of the goods, the supply of replacement goods or payment of the cost of having the goods supplied again.
- (f) Cheeky devil liability under the agreement will be reduced by the amount of any contributory loss or damage to the extent caused by customers act or omission.
- (g) To the extent that any goods or services supplied by Cheeky devil are supplies to a 'consumer' as defined in the Australian Consumer Law, Cheeky devil will comply with any applicable consumer guarantees and the following statement will apply:
"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 for compensation for any other reasonably foreseeable loss or damage. You are entitled to have goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (h) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to Cheeky Devil by post to PO BOX 3056 Bassendean DC, WA 6942.
- (i) Customer acknowledges and agrees that, to the extent permitted by law, Cheeky devil has no liability in contract, tort (including negligence or breach of statutory duty), by statue or otherwise for loss or damage (whether direct or indirect) of profit, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data for any indirect, special or consequential loss or damages whatsoever.
- (j) Subject to clause 9(g), Cheeky devil total liability under any contract and the agreement shall not exceed to total dollar amount of the goods purchased by customer under each contract.

10. Proprietary information

- (a) Customer acknowledges that all Proprietary information and all right, title and interest therein are the sole property of or licensed by Cheeky devil and customer shall gain no right, title or interest in the Proprietary information whatsoever. Customer specifically acknowledges Cheeky devil exclusive rights to ownership of any modification, translation or adaptation of the proprietary information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of customer or any buyer of customer or otherwise.
- (b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, modify or decompile any of Cheeky devil documentation relating to the goods.

11. Export / resale

- (a) The goods supplied are intended for use in Australia and selected countries unless Cheeky devil otherwise agrees. If customer exports the goods, it is customers responsibility to ensure that the goods and the use to which they are put comply with the laws of the destination.
- (b) Customer acknowledges that the goods purchased by customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on any government denied persons or entities list by end-user engaged in related activities.

- (c) If customer resells the goods. It shall no, in connection with resell, pay or offer to pay, money or anything of value to any government official entity or organisation, any political party, any candidate for public office or their employees or relative, or any other person entity for the purpose of influencing purchasing decisions for any other improper purpose.

12. Miscellaneous

- (a) The fact that Cheeky devil fails to do, or delays in doing, something it is entitled to do under the agreement, does not amount to a waiver of its right to do it. Cheeky devil must agree in writing to any waiver
- (b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable and invalid, but can also be read in a way makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid that clause or part is to be treated as removed from the agreement, but the rest of the agreement is not affected.
- (c) Cheeky devil shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the agreement if the failure or delay has been caused directly or indirectly by any act of god, war or other civil commotion, strike, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond Cheeky devil reasonable control and not as a consequence of Cheeky devil negligence.
- (d) Any notice to be given to a party under the agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the purchase order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or otherwise given at the time it was actually received.
- (e) Governing Law: Cheeky devil and the customer agrees that this Agreement and any supplementary agreement for the supply of goods and or services by Cheeky devil to the customer is governed by the laws of Western Australia. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the courts in Western Australia and any court hearing appeals from the courts.
- (f) Where there is more than one customer then the liability of each shall be joint and several.
- (g) The rights and remedies provided in the agreement will not affect any other rights or remedies available to Cheeky devil.
- (h) Customer shall not assign this agreement without Cheeky devil's prior written consent.
- (i) If the customer is a trustee, then the customer is bound by the agreement both personally and in its capacity as a trustee.
- (j) All products are sold as novelty only and are to be used by the customer in the manner in which they are intended only. Cheeky devil will not be responsible or accountable for any misuse of the products.
- (k) Upon customer purchase of a product or service from Cheeky devil they automatically are deemed to have read and agreed with all the terms and conditions. The customer is committed to and the customer is bound by these terms and conditions. Through purchase the customer is also agreeing that they are of legal age 18+.
- (l) Once Australia post or other courier service has informed Cheeky devil that an order has been delivered Cheeky devil is no longer accountable for the order and its future movements.
- (m) All products, items, goods are used by the consumer at their own risk and by purchase agree to not hold Cheeky devil liable for any harm or consequence through the use of these items.
- (n) Cheeky devil reserves the right to substitute items if they have been discontinued or we deem it necessary. They will be substituted to product of similar description and visual appearance, or equal or greater retail value. Please note: actual product colour and physical product attributes may differ from the website to the product you receive. All substituted items will be fit for intended purpose.
- (o) Cheeky devil reserves the right to change any terms and conditions at anytime without prior notice. All judgement by Cheeky devil are final.