

## **Website terms and conditions: goods to consumers, payment online**

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## **Website terms and conditions: goods to consumers, payment online**

These terms and conditions regulate the business relationship between you and us. By using Our Website in any way, or by buying from us, you agree to be bound by them.

No person under the age of 18 years may purchase Goods. If you are under 18, please confer with an adult to make your purchase.

We are: Phoenix Foundry Pty Ltd  
Our address is: 44 Duke Street, Uralla NSW Australia

You are: a visitor to Our Website or our customer

### **The terms and conditions**

#### **1 Definitions**

In this agreement:

“Carrier”	means any person or business contracted by us to carry Goods from us to you, whether all or part of the distance.
“Consumer”	means any natural person who, in connection with this agreement, is acting for purposes that are outside his business.
“Our Website”	means the entire computing hardware and software installation that is or supports Our Website. Do we need to specify the actual address?
“Goods”	means any of the Goods we offer for sale on our Website
“Content”	means any material in any form published on Our Website by us or any third party with our consent.
“Material”	means Content of any sort posted by you on Our Website

#### **2 Our contract with you**

These terms and conditions apply:

- 2.1 So far as the context allows, to you as a visitor to Our Website; and
- 2.2 in any event to you as a buyer or prospective buyer of our Goods.
- 2.3 We shall acknowledge your order by e-mail confirmation. That is when our contract is made. Our message will also confirm details of your purchase.

- 2.4 We may change these terms from time to time. The terms that apply to you are those posted here on Our Website on the day you order Goods.
- 2.5 Manufacture of your Goods will commence within 48 hours of the acknowledgement email being sent. If you wish to make any changes to your order, changes received after production has commenced will attract extra charges
- 2.6 Normal manufacturing time is 15 working days from date of order. Delivery is in addition to this.
  - 2.6.1 we do not guarantee that manufacturing will take any specific length of time;
  - 2.6.2 if you wish to receive your Goods by a specific date, you must notify us of this when placing your order
  - 2.6.3 production times less than 10 working days will attract a surcharge. We will notify you of the total cost of your order before accepting any short manufacturing times
  - 2.6.4 We reserve the right to refuse to supply Goods within a certain time frame if this will place undue strain and cost upon our manufacturing processes
- 2.7 If in future, you buy Goods from us under any arrangement which does not involve your payment via Our Website, these terms still apply.
- 2.8 If we owe you money on account of your cancellation, we will credit your credit or debit card as soon as reasonably practicable but in any event no later than 60 days from the date of cancellation of your order.

### **3 Your account with us**

- 3.1 You agree that you have provided, and will continue to provide accurate, up to date, and complete information about yourself. We need this information to provide you with the Goods.
- 3.2 If you use the website, you are responsible for maintaining the confidentiality of your account and password and for preventing any unauthorised person from using your computer.
- 3.3 You agree to accept responsibility for all activities that occur under your account or password. You should tell us immediately if you believe some person has accessed your account without your authority and also log in to your account and change your password.
- 3.4 We reserve the right to refuse you access to Our Website.

### **4 Price and Payment**

- 4.1 Please refer to the Invoice Terms and Conditions.

- 4.2 We endeavor to keep our website and catalogue prices updated and accurate but it is possible that the price may have increased from that published. If that happens, we will not send your order until you have confirmed that you wish to order at the new price.
- 4.3 Banking charges by the receiving bank on payments to us will be borne by us.
- 4.4 Any information given by us in relation to exchange rates are approximate only and may vary from time to time.
- 4.5 Prices include Australian good and service tax. If you show by your delivery address that you reside outside Australia, GST will be deducted at the payment point.

## **5 Delivery**

- 5.1 Deliveries will be made by carrier instructed by us to the address stipulated in your order. You must ensure that someone is present to accept delivery.
- 5.2 If we are unable to deliver your order after two calls by our carrier, we will notify you to try to arrange an alternative date for delivery, convenient to you.
- 5.3 We may deliver the Goods in instalments if they are not all available at the same time for delivery.
- 5.4 Goods are sent at our risk until signed for by you or by any other person at the address you have given to us.
- 5.5 Goods are sent by carrier. We will send you a message by email to tell you when we have despatched your order. Account customers can access account details online.

## **6 Cancellation of order**

- 6.1 If you cancel your order after production has commenced you will be charged the cost of manufacture of the Goods up to the point of cancellation plus an administrative fee. Details of this charge can be found by calling us on +61 2 6778 4803
- 6.2 Details of our after-sales service and guarantees, if any, are given on our website.
- 6.3 If you cancel after we have dispatched the Goods, you will be liable for the full price of the Goods including any delivery charges.
- 6.4 This paragraph does not affect your rights in the event that the Goods are faulty.

## **7 Foreign taxes, duties and import restrictions**

- 7.1 If you are not in Australia, we have no knowledge of, and no responsibility for, the laws in your country.
- 7.2 You are responsible for purchasing Goods which you are lawfully able to import. Phoenix is responsible for the payment of import duties and taxes of any kind levied in your country.

## **8 Goods returned and refund policy**

- 8.1 Our most important task is to ensure your absolute satisfaction. We will always strive to reach that target. However, we acknowledge that mistakes are made occasionally. If you are not wholly satisfied with the Product, please tell us at the earliest opportunity:
  - 8.1.1 exactly what is the fault;
  - 8.1.2 the date, if relevant, when the fault became apparent;
  - 8.1.3 when and how you discovered the fault;
  - 8.1.4 how the fault affected your use of the Goods;
- 8.2 To do this, it is essential that you follow the instructions below. These provisions apply in the event that you return Goods to us because you say they are faulty:
- 8.3 You must tell us by email message to [orders@phoenixfoundry.com.au](mailto:orders@phoenixfoundry.com.au) or by letter to our land address at the top of this agreement, that you would like to return goods, specifying exactly what goods and when purchased, and giving full details of the defect or other reason for return. We will then issue a returns note. If you send goods to us without a returns note, we may not be able to identify sufficient details to enable us to attend to your complaint.
- 8.4 The Goods must be returned to us as soon as any defect is discovered.
- 8.5 So far as possible, Goods should be returned:
  - 8.5.1 with both goods and all packaging as far as possible in their original condition;
  - 8.5.2 securely wrapped;
  - 8.5.3 including our delivery slip;
  - 8.5.4 at your risk and cost.
- 8.6 Any monies returned will:
  - 8.6.1 be returned via the method of payment received unless a problem arises in which case monies will be returned in the form as agreed.
  - 8.6.2 be refunded within a maximum of 45 days.
- 8.7 Refunds are not given if you
  - 8.7.1 change your mind
  - 8.7.2 or for any reason except those mentioned above

## **9 Disclaimers**

- 9.1 We or our Content suppliers may make improvements or changes to Our Website, the Content, or to any of the Goods, at any time and without advance notice.
- 9.2 You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large website. We would be grateful if you bring to our immediate attention, any that you find.
- 9.3 We give no warranty and make no representation, express or implied, as to:
  - 9.3.1 the adequacy or appropriateness of the Goods for your purpose;
  - 9.3.2 the truth of any Content on Our Website published by someone other than us;
  - 9.3.3 any implied warranty or condition as to merchantability or fitness of the Goods for a purpose other than that for which the Goods are commonly used;
  - 9.3.4 compatibility of Our Website with your equipment, software or telecommunications connection.
- 9.4 Our Website contains links to other Internet websites outside our power and control. You acknowledge and agree that we shall not be liable in any way for the Content of any such linked website, nor for any loss or damage arising from your use of any such website.
- 9.5 We are not liable in any circumstances for special, indirect or consequential loss or any damages whatsoever resulting from loss of use, loss of data or loss of revenues or profits, whether in an action of contract, negligence or otherwise, arising out of or in connection with your use of Our Website or the purchase of Goods.
- 9.6 In any event, including the event that any term or condition or obligation on our part ("Implied Term") is implied into these conditions by law, then our liability is limited to the maximum extent permitted by law, to the value of the goods or services you have purchased.
- 9.7 The above two sub paragraphs do not apply to a claim for personal injury.

## **10 Content and Intellectual Property Rights**

- 10.1 We will defend the intellectual property rights in connection with our Goods and Our Website, including copyright in the Content whether provided by us or by any other content provider (including copyright in: text, graphics, logos, icons, images, audio clips, digital downloads, data, and software).
- 10.2 We also claim copyright in the designs and compilation of all Content of Our Website. Title, ownership rights, shall remain the sole property of us and / or the other content provider. We will strongly protect those rights in all countries.

- 10.3 Except as set out below, you may not copy, modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of the Content, in whole or in part.
- 10.4 You may not use our name or logos or trade marks or any other Content on any website of yours or that of any other person.
- 10.5 Subject to the other terms of this agreement, you may download or copy Content only for your own personal use, provided that you maintain all copyright and other notices contained in it. You may not store electronically any significant portion of any Content.

## 11 Privacy Policy

### **Privacy Notice Table Of Contents:**

- Our Commitment To Privacy
- The Information We Collect
- How We Use Information
- Our Commitment To Data Security
- Our Commitment To Children's Privacy
- How To Access Or Correct Your Information

### **Our Commitment To Privacy**

Protecting your privacy and your personal information is an important aspect of the way Phoenix Foundry creates, organises and implements our activities on and off-line. Our privacy policy supports and endorses all state and national privacy regimes. While wanting to encourage the broadest possible access to our products and information, Phoenix Foundry respects the privacy of the users of our website.

### **The Information We Collect:**

This notice applies to all information collected or submitted on the Phoenix Foundry website. On some pages, you can order products, make requests, and register to receive materials. The types of personal information collected at these pages are:

- Name
- Address
- Email address
- Phone number

On some pages, you can submit information about other people. For example, if you order a gift online and want it sent directly to the recipient, you will need to submit the recipient's address. In this circumstance, the types of personal information collected are:

Name  
Address  
Phone Number  
Email address

When paying accounts on-line Credit Card details will be entered only on the ANZ eGate Payment Server (Migs) in a secure SSL environment using a 128-bit secret key for encryption. Credit Cards details are not submitted to the Phoenix Foundry website nor are they ever stored on the Phoenix Foundry website.

**The Way We Use Information:**

We use the information you provide about yourself when placing an order only to complete that order. We do not share this information with outside parties except to the extent necessary to complete that order.

We use the information you provide about someone else when placing an order only to ship the product and to confirm delivery. We do not share this information with outside parties except to the extent necessary to complete that order.

We use return email addresses to answer the email we receive. Such addresses are not used for any other purpose and are not shared with outside parties.

Finally, we never use or share the personally identifiable information provided to us online in ways unrelated to the ones described above without also providing you an opportunity to opt-out or otherwise prohibit such unrelated uses.

**Our Commitment To Data Security**

To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, we have put in place appropriate physical, electronic, and managerial procedures to safeguard and secure the information we collect online.

**Our Commitment To Children's Privacy:**

Protecting the privacy of the very young is especially important. For that reason, we never collect or maintain information at our website from those we actually know are under 13, and no part of our website is structured to attract anyone under 13.

**How You Can Access Or Correct Your Information**

You can access all your personally identifiable information that we collect online and maintain by emailing [orders@phoenixfoundry.com.au](mailto:orders@phoenixfoundry.com.au) or by phoning (02) 6778 4803. We use this procedure to better safeguard your information.

You can correct factual errors in your personally identifiable information by sending us a request that credibly shows error.

To protect your privacy and security, we will also take reasonable steps to verify your identity before granting access or making corrections.

## **12. Your email address**

- 12.1 You represent that any username or email address selected by you, when used alone or combined with a second or third level domain name, does not interfere with the rights of any third party and has not been selected for any unlawful purpose.
- 12.2 You acknowledge and agree that if we believe such selection does interfere with the rights of any third party or is being selected for any unlawful purpose, we may immediately suspend the use of such name or email address, and you will indemnify us for any claim or demand that arises out of your selection.
- 12.3 You acknowledge and agree that we shall not be liable to you in the event that we are ordered or required by a court or judicial authority, to desist from using or permitting the use of a particular domain name as part of a name or email address.

## **13. Your Material**

- 13.1 If you post any Material in Our Website, you warrant that you own the copyright in it and you accept all risk and responsibility for it. You grant to us the right to edit, copy, publish, distribute, translate and otherwise use it in any medium and for any purpose.
- 13.2 You agree that if you do post any Material on Our Website, in doing so, you grant to us a non-exclusive, irrevocable, royalty-free, right in perpetuity to use that Material in any way whatever, throughout the World in any medium. You agree to waive your right to be identified as the author and your right to object to derogatory treatment of your Material.
- 13.3 You agree to perform all further acts necessary to perfect any of the above rights granted by you to us, including the execution of deeds and documents, at our request.
- 13.4 You represent and warrant that:
  - 13.4.1 you own the rights to all of the Material that you post;
  - 13.4.2 any fact stated in your Material is accurate;

## **14. System Security**

- 14.1 We will do our best to maintain Our Website so that you have constant use, but there will be times when your use may be interrupted.

- 14.2 You agree that you will not, and will not allow any other person to violate or attempt to violate any aspect of the security of Our Website.
- 14.3 You may not use any software tool for the purpose of extracting data from our website.
- 14.4 You understand that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.

## **15. Acceptable use Policy**

As a condition of your use of Our Website, you agree to comply with these provisions:

- 15.1 You will not use or allow anyone else to use the Web Site to post or otherwise publish:
  - 15.1.1 copyright works;
  - 15.1.2 commercial audio, video or music files;
  - 15.1.3 any Material which violates the law of any established jurisdiction;
  - 15.1.4 unlicensed software;
  - 15.1.5 software which assists in or promotes: emulators, phishing, hacking, password cracking, IP spoofing;
  - 15.1.6 links to any of the material specified in this paragraph;
  - 15.1.7 pornographic Material;
  - 15.1.8 any Material promoting discrimination or animosity to any person on grounds of gender, race or colour.
- 15.2 You will not use the Services for spamming. Spamming includes, but is not limited to:
  - 15.2.1 The bulk sending of unsolicited messages, or the sending of unsolicited emails which provoke complaints from recipients;
  - 15.2.2 The sending of junk mail;
  - 15.2.3 The use of distribution lists that include people who have not given specific permission to be included in such distribution process;
  - 15.2.4 Excessive and repeated posting off-topic messages to newsgroups;
  - 15.2.5 Excessive and repeated cross-posting;
  - 15.2.6 Email harassment of another Internet user, including but not limited to, transmitting any threatening, libelous or obscene Material, or Material of any nature which could be deemed to be offensive;
  - 15.2.7 The emailing of age inappropriate communications or content to anyone under the age of 18.

## **16. Indemnity**

You agree to indemnify us against any claim or demand, including reasonable lawyers' fees, made by any third party due to or arising in any way out of your use of Our Web Site, your posting any Material, or the infringement by you, or by any other person using your computer, of any intellectual property or other right of any person.

## **17. Miscellaneous provisions**

- 17.1 When we communicate with you we do so by email. You agree that email communications are contractually binding in the same way as properly signed and dated paper sent by post.
- 17.2 Where we provide goods or services without specific charge to you, then it (or they) is deemed to be provided free of charge, and not to be associated with any other goods or service for which a charge is made. Accordingly, there is no contractual nor other obligation upon us in respect of those goods or service.
- 17.3 Nothing in this agreement or on Our Website shall confer on any third party any benefit or obligation.
- 17.4 If any of these terms is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 17.5 No waiver by us, in exercising any right, power or provision in this agreement shall operate as a waiver of any other right or of that same right at a future time; nor shall any delay in exercise of any power or right be interpreted as a waiver.
- 17.6 In the event of a dispute arising out of or in connection with these terms or any contract between you and us, then you agree to attempt to settle the dispute by engaging in good faith with us in a process of mediation before commencing arbitration or litigation.
- 17.7 We are not liable for any breach of our obligations resulting from causes beyond our reasonable control including strikes of our own employees.
- 17.8 This Agreement shall be governed by and construed in accordance with the law of Australia. This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.