

Terms and Conditions

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This terms and conditions is dated on the date on which the payment is received from the customer and made between:

253priceline Wynyard Export Pty. Ltd., a Supplier incorporated in Australia under the Corporations Act 2001 and is taken to be registered in New South Wales, whose main place of business is at 309-315 George Street, Wynyard NSW2000, (“Supplier”) and the buyer whose recipient address is not in Australia (“Customer”)

It is now accepted as follows:

1. Definitions

In this terms and conditions, the following words shall have the following meanings, unless the context requires otherwise:

“Bespoke Goods”	means Goods or parts of Goods made or customised specifically for the Customer
“Customer”	means the person named on the written Order.
“Confidential Information”	means all information about the Supplier but does not include information that it is reasonably necessary to disclose to a Customer or other person in the usual course of business so far as that information is disclosed in those circumstances. It includes among other things: information about staff, their personal contact information, our businesses, methods of doing business, future plans, policies, suppliers and Customers. It includes information about suppliers, agents, distributors and Customers. It includes information about the Intellectual Property and the Know-how.
“Goods”	means the goods/products to be sold by the Supplier to the Customer from time to time after today and described and priced in any document specifically agreed between the parties and referring to this terms and conditions.
“Incoterm”	means pre-defined commercial terms published by the International Chamber of Commerce to describe a specific action or situation.
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after

today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, Know-how, creations and inventions, together with all rights which are derived from those rights.

“Know-how”	means methods, procedures and ways of working and organising which are not capable of protection as copyright.
“Order”	means the Customer's purchase order for the Goods, together with any separate document specifying or describing the Goods.
“Price”	means the sums of money described

2. Interpretation

In this terms and conditions unless the context otherwise requires:

- 2.1. A reference to a person is a reference to one or more individuals, whether or not formally in partnership, or to a corporation, government body, or other association or organization;
- 2.2. Incoterms 2010 apply to this terms and conditions whether specified in full or abbreviated form;
- 2.3. These terms and conditions apply to all supplies of Goods by the Supplier to the Customer. They prevail over any terms proposed by the Customer;
- 2.4. Any terms and conditions by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing;
- 2.5. any obligation of any person arising from this terms and conditions may be performed by any other person;
- 2.6. In this terms and conditions references to a party include references to a person to whom those rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that party;
- 2.7. The headings to the paragraphs and schedules (if any) of this terms and conditions do not affect the interpretation;

- 2.8. In any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, such cost to be calculated \$18.29 per hour.
- 2.9. This terms and conditions is made only in the English language. If there is any conflict in meaning between the English language version of this terms and conditions and any version or translation of this terms and conditions in any other language, the English language version shall prevail.

3. This contract

- 3.1. This is the over-arching contract, the terms of which will apply to all transactions between the parties. Additional terms may be made in relation to any specific consignment of Goods.
- 3.2. In any conflict between these terms and the terms subsequently documented in relation to a particular consignment of Goods, the terms of the subsequent document shall prevail.
- 3.3. Any amendment to this contract must refer to this contract, be signed by both parties and dated.

4. Entire terms and conditions

- 4.1. This terms and conditions contains the entire terms and conditions between the parties and supersedes all previous terms and conditions and understandings between the parties.
- 4.2. Each party acknowledges that, in entering into this terms and conditions, he does not rely on any representation, warranty, information or document or other term not forming part of this terms and conditions.
- 4.3. The Purchaser admits that the Goods have been inspected by him or on his behalf; and
- 4.4. Conditions, warranties or other terms implied by statute or common law are excluded from this terms and conditions to the fullest extent permitted by law.

5. The Price

- 5.1. The Price of the Goods shall be the price stipulated in the Supplier's published price list current at the date of dispatch of the Goods.
- 5.2. Once agreed, the Price for the Goods shall remain fixed for 24 hours unless otherwise agreed in writing by the parties.
- 5.3. The Price includes the cost of packaging.
- 5.4. Prices are exclusive of import duty or any other tax charged or imposed by the country of importation except China, all of which are payable by the Customer.

6. Acceptance

- 6.1. The Customer's Order is an offer to buy from the Supplier.
- 6.2. Nothing said or done by the Supplier is an acceptance of an Order until the Supplier actually dispatches the Goods.
- 6.3. At any time before the Goods are dispatched, the Supplier may decline to supply the Goods to the Customer without giving any reason.

7. Payment

- 7.1. Payment of the Price shall be due within 24 hours of the date of the Supplier's invoice.
- 7.2. All sums due under this terms and conditions:
 - 7.2.1 shall be made in full, without any set-off or counter claim and without deduction of or withholding for any tax now or subsequently imposed by or in any country;
 - 7.2.2 shall be made by the due date, failing which the Supplier may charge the interest on late payments on a daily basis at a rate equivalent to 5% above the base lending rate of Australia and New Zealand Banking Group Limited plc from time to time;
 - 7.2.3 shall be paid in Australian dollar by Australia and New Zealand Banking Group Limited eGate made payable to 253Priceline Wynyard Export Pty. Ltd. Business Account.

- 7.3. If any applicable law requires any tax or charge to be deducted before payment, the amount due under this terms and conditions shall be increased so that the payment made will equal the amount due to as if no such tax or charge had been imposed.
- 7.4. Any sum due under this terms and conditions not expressed in Australian dollars shall be converted into Australian dollars at the official rate of exchange in Australia at the close of business on the last day before the payment became due.
- 7.5. The parties shall collaborate to take advantage of any double taxation treaties in force. Where there is an error on the letter or credit, or for whatever reason the Supplier's bank rejects the letter or credit, the Customer shall pay all the bank charges and other costs of the Supplier in relation to such error and ensure that a correct letter of credit is issued forthwith.
- 7.6. Where credit has been agreed in writing between the parties, all invoices shall be paid by the Customer within 24 hours of the date of invoice.
- 7.7. No right of set off shall arise.

8. Transportation

The Goods will be supplied / carried / delivered as follows:

- 8.1. EXW – Ex Works at 309-315 George Street, Wynyard NSW2000.
- 8.2. All rights, obligations, conditions and matters relating to the above Incoterm shall apply to this contract. So far as any cost is not allocated by the relevant Incoterm, it shall be payable by the Customer.
- 8.3. The Customer shall pay any handling and shipping or other incidental costs and expenses the Supplier has incurred or will incur in relation to the Goods.

9. Delivery

- 9.1. The Supplier shall deliver the Goods to the address specified on the Order, unless otherwise agreed in writing.
- 9.2. Time for delivery specified on the Order, if any, is an estimate only and time shall not be of the essence.

10. Risk and retention of title

- 10.1. Ownership of the Goods which are the subject of this contract shall not pass to the Customer until they are fully paid for, but the risk in the Goods shall be borne by the Customer from the date of the delivery.
- 10.2. In spite of delivery having been made, property in the Goods shall not pass from the Supplier until:
 - 10.2.1 the Customer has paid the Price in full; and
 - 10.2.2 no other sums whatever shall be due from the Customer to the Supplier.
- 10.3. Until property in the Goods passes to the Customer the Customer shall hold the Goods on a fiduciary basis as bailee for the Supplier.
- 10.4. The Customer shall store the Goods (at no cost to the Supplier) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Supplier's property.
- 10.5. Notwithstanding that any of the Goods remain the property of the Supplier the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of the Supplier.
- 10.6. Any sale or dealing shall be a sale or use of the Supplier's property by the Customer on the Customer's own behalf, so that the Customer deals as principal and not as agent for the Supplier.
- 10.7. Until property in the Goods passes from the Supplier the entire proceeds of sale of the Goods shall be held in trust for the Supplier and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Supplier's money.
- 10.8. The Supplier shall be entitled to recover the Price notwithstanding that property in any of the Goods has not passed from the Supplier.
- 10.9. If the Supplier asks the Customer to return Goods unsold he shall do so.
- 10.10. If, when asked, the Customer fails to return the Goods, the Supplier may enter the Customer's premises and repossess the Goods.
- 10.11. The Customer shall not in any way charge by way of security for any indebtedness any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Customer

does so, all money owing to the Supplier shall immediately become due and payable.

10.12. The Customer shall keep the Goods insured to their full value against all risks to the reasonable satisfaction of the Supplier until sold on by the Customer.

10.13. If, when the Supplier asks, the Customer fails to deliver to the Supplier a copy of his insurance policy covering risks to the Goods, all money owing by the Customer to the Supplier shall immediately become due and payable.

10.14. While ever the Supplier has title to any of the Products, which the Customer has attached to or incorporated into new products, then:

10.14.1 title to the new products shall vest in the Supplier;

10.14.2 the Customer shall hold such products as bailee of and to the order of the Supplier until the Supplier has received payment in full;

10.14.3 all the Supplier's rights in relation to the Products (including its rights under this terms and conditions) shall extend to such new products.

11. Compliance with standards

11.1. In so far as the Goods must comply with the standards of any country, the Supplier shall ensure that they comply with all regulations of any authority in his own country, applicable to goods for export and relevant to the Goods.

11.2. The Customer shall ensure compliance of the Goods with the laws of his own and every other relevant country.

11.3. If the Customer fails to provide in the Order for any national or international requirement in the Specification, and he subsequently requires help from the Supplier in achieving that compliance, the Supplier may charge a reasonable fee for such time and work.

11.4. The Customer shall indemnify the Supplier against all loss and liability, including legal fees on an indemnity basis, arising from claims by the Customer's customer based on non-compliance of the Goods with any local law or intellectual property right.

12. Goods not as Ordered

- 12.1. The Supplier shall use all reasonable endeavours to ensure:
 - 12.1.1 the Goods comply with their description on the Order; and
 - 12.1.2 are of satisfactory quality and/or fit for their purpose; and
 - 12.1.3 are delivered to the Customer.
- 12.2. Immediately upon taking delivery of any Goods, the Customer shall examine the Goods and shall satisfy himself that they comply with the Order, are of merchantable quality and in safe, clean and usable condition.
- 12.3. If the Customer finds any defect in the quality or quantity of the Goods, or a failure to comply with the Order, he must immediately inform the Supplier of that defect. If no notice is received by the Supplier within 24 hours from the time of being delivered, then it shall be presumed that the Customer has accepted the Goods.
- 12.4. If the Customer claims that the Goods were under-delivered or defective, the Customer will return any damaged Goods at its own expense to the Supplier.
- 12.5. If the Supplier agrees with the shortage or defect, he will top up the Order to the correct number and / or will replace the damaged Goods at his own cost and refund to the Customer the cost of returning the Goods.
- 12.6. The above procedure shall be the Customer's only remedy.

13. Liability for subsequent defects

- 13.1. The Supplier will repair or replace Goods showing a defect in the following circumstances:
 - 13.1.1 the defect is reported to the Supplier within 24 hours of delivered;
 - 13.1.2 the defect results only from faulty design;
 - 13.1.3 the Customer has returned the defective Goods or parts to the Supplier if he has so requested.
- 13.2. If the Supplier agrees that he is liable, he will refund the cost of return carriage and will repair or replace the Goods free of charge.

- 13.3. If the Supplier repairs or replaces Goods, the Customer has no additional claim against the Supplier either under this terms and conditions or by statute or common law, in respect of the defect.

14. Intellectual property rights

- 14.1. The Supplier owns all Intellectual Property rights in the Goods.
- 14.2. The Customer shall not claim nor register any intellectual property right in the Goods, but shall notify the Supplier if it discovers any infringement of such rights by a third party.
- 14.3. The Customer acknowledges that it has no right or licence to manufacture the Goods or any other goods which could either be mistaken for any of the Goods or which perform a similar function to any of the Goods.
- 14.4. The Customer agrees that he will use his best endeavours to notify all persons who may aware of the Goods, that all Intellectual Property rights are owned by the Supplier and others and not by the Customer.

15. Confidentiality

The Customer acknowledges that in dealing in the Goods, he will acquire knowledge and Confidential Information relating to those Goods. Accordingly he agrees:

- 15.1. to prevent disclosure of the Know-how or other Confidential Information to anyone (including employees) who has not signed a confidentiality terms and conditions in a form approved by the Supplier;
- 15.2. to restrict visitors to the premises of the Customer so as to prevent access to any element of the Know-how;
- 15.3. Know-how shall be disclosed only to those employees of the Customer to whom it must be disclosed to enable them to do their job;
- 15.4. the obligation of confidence shall continue until the Know-how is in the public domain;
- 15.5. it shall not be a breach of this terms and conditions for either party to disclose in general terms relevant items of the Know-how to the Customer's customers so far as it is necessary to do so to promote sales;

- 15.6. to compensate the Supplier for any use by the Customer of the Know-how otherwise than in accordance with this terms and conditions;
- 15.7. to indemnify the Supplier for any liability incurred to third parties for any use of the Know-how otherwise than in accordance with this terms and conditions;
- 15.8. to give the Supplier (at the Supplier's expense) any assistance it may require in connection with the registration of any trade name or designation as a trademark in any part of the world;
- 15.9. not to interfere with, nor attempt to prohibit, the use or registration of any trade name or designation by any other licensee of the Supplier;
- 15.10. when required to do so by the Supplier, to become a registered user of any trademark and to pay the expenses, including registry fees, involved in such registration as user;
- 15.11. not to use any name or mark similar to or capable of being confused with any trade name or designation associated with the Supplier;
- 15.12. not to use any trade name or designation associated with the Supplier or any derivation of them in its corporate name.
- 15.13. All Confidential Information and other manufacturing data, supplied by the Supplier to the Customer, whether marked as confidential or not, shall be held in strict confidence by the Customer and only used for the purposes for which it was supplied.

16. Limitation of liability

- 16.1. As far as the law allows, the maximum limit of liability of the Supplier to the Customer, whether in contract, tort, negligence, breach of statutory duty or otherwise shall be the value on the invoice in aggregate.
- 16.2. Neither party shall be liable to the other in any way, for any loss or expense which is:
 - 16.2.1 indirect or consequential loss; or
 - 16.2.2 economic loss or other loss of turnover, profits, business or goodwill.
- 16.3. Nothing in this terms and conditions excludes liability for fraud.

16.4. The Supplier shall not be liable in any circumstances for loss or damage to any person arising from modification of any Goods or their incorporation into any other product or Goods.

17. Assignment

17.1. Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this terms and conditions without the prior written consent of the other party, except that:

17.2. a party may assign and transfer all its rights and obligations under this terms and conditions to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this terms and conditions.

18. Interest

18.1. All sums due from either of the parties to the other which are not paid on the due date shall bear interest from day to day at the annual rate of 20% over the current Australia and New Zealand Banking Group Limited daily base rate with a minimum of 20% per year.

18.2. Interest shall be calculated and compounded monthly.

19. Dispute Resolution

In the event of a dispute arising out of this terms and conditions the parties undertake to attempt to settle it through professional mediation before commencing litigation.

20. Uncontrollable events

20.1. If any uncontrollable event delays or prevents the performance of the obligations of either party for a continuous period of more than 90 days, the other party may give notice to terminate this terms and conditions. The notice must specifying a date at least 7 days ahead, when the termination will take effect.

- 20.2. A termination notice is irrevocable unless both parties agree to reinstate this terms and conditions.
- 20.3. Costs arising from the delay or stoppage will be borne by the party incurring those costs;
- 20.4. Regardless of the reason for stoppage or delay, if it continues for more than 90 days, either party may terminate this terms and conditions with immediate effect on giving written notice to the other.
- 20.5. The party claiming the Uncontrollable Event will take all necessary steps to perform this terms and conditions despite the Uncontrollable Event.
- 20.6. So long as the Uncontrollable Event continues the Customer may contract with others for the supply of any items and/or services which the Supplier fails to supply in accordance with the terms of this terms and conditions.

21. Miscellaneous matters

- 21.1. The schedules, if any, to this terms and conditions are part of the terms and conditions and have the same force and effect.
- 21.2. No amendment or variation to this terms and conditions is valid unless in writing, signed by each of the parties or his authorised representative.
- 21.3. Unless otherwise provided, time shall be of the essence of any date or period is mentioned in this terms and conditions,
- 21.4. If any term or provision of this terms and conditions 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.
- 21.5. The rights and obligations of the parties set out in this terms and conditions shall pass to any permitted successor in title.
- 21.6. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 21.7. Any notice to be served on either party shall be sent by hand or by first class post or recorded delivery or by fax or by email or by social media

and shall be deemed to have been received by the addressee within 72 hours of posting or 24hours if sent by fax or social media or email to the correct number or email address.

- 21.8. This terms and conditions does not give any right to any third party.
- 21.9. In the event of any conflict between any term of this terms and conditions and the provisions of the articles of a limited Supplier or any comparable document intended to regulate any other corporate or collective body, then the terms of this terms and conditions shall prevail.
- 21.10. Each party shall bear its own legal costs and other costs and expenses arising in connection with the negotiation and drafting of this terms and conditions.
- 21.11. The validity, construction and performance of this terms and conditions shall be governed by laws of the State of New South Wales. Any dispute arising in connection with this terms and conditions shall be subject to the exclusive jurisdiction of the State of New South Wales courts.