

**FX Australia Pty Limited**  
**ABN 75 089 071 385**

**TERMS & CONDITIONS OF SALE**

These terms and conditions of sale apply only to all retail sales made by FX Australia Pty Limited. Any persons wishing to distribute or sell FX Australia products should contact [sales@fxaustralia.com.au](mailto:sales@fxaustralia.com.au) for terms and conditions relating to such sales.

**1. DEFINITIONS**

In these terms and conditions:

- (a) 'Delivery' means delivery to the Purchaser, the Purchaser's nominated agent or a carrier engaged or nominated by the Purchaser.
- (b) 'Delivery Date' means the date of delivery of the Goods by FX (or FX's agent) to the Purchaser.
- (c) 'FX' means FX Australia Pty Limited (ABN 75 089 071 385) and any related body corporate of FX within the meaning of section 50 of the *Corporations Act, 2001*.
- (d) 'Goods' means all products ordered by the Purchaser from FX which orders have been accepted by FX.
- (e) 'Purchaser' means the person or entity which orders or agrees to purchase the Goods the subject of these terms and conditions of sale.

**2. CONTRACTUAL TERMS**

- 2.1. The only terms which are binding upon FX are those set out in this document or otherwise agreed to in writing between FX and the Purchaser.
- 2.2. The supply of Goods under these terms and conditions is governed by the laws of the State of New South Wales. FX and the Purchaser agree to submit to the jurisdiction of the Courts of that State.

**3. WARRANTY – CONDITION OF GOODS**

- 3.1. Subject to the provisions of the *Competition and Consumer Act 2010* and any other relevant and applicable State and/or Commonwealth legislation:
  - (a) FX warrants that the Goods are free of defects and fit for purpose;
  - (b) FX's liability for breach of sub-clause 3.1(a) or a condition or warranty, including the Statutory Provisions is limited to any one of the following, at the sole discretion of FX:
    - (i) repair or replacement of the Goods or supply of equivalent Goods; or
    - (ii) refund of the price paid by the Purchaser for the Goods.

**PROVIDED THAT**

- 3.2. The Purchaser will examine the Goods immediately upon receipt for defects and will notify FX of any defects in writing by contacting Dianne Sanvito by mail at PO Box 7057 Wetherill Park DC NSW 1851 within 7 days of the Delivery Date and FX, in its sole and unfettered opinion, is satisfied that the Goods were defective at the Delivery Date.
- 3.3. If the Purchaser fails to notify FX of any defects within 7 days of the Delivery Date, the Purchaser is deemed to have accepted the Goods.
- 3.4. If the Purchaser is a consumer as defined in section 3 of the Australian Consumer Law, FX provides that:

*'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 to compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of an acceptable quality and the failure does not amount to a major failure.'*
- 3.5. To the extent permitted by law, FX excludes all liability to the Purchaser for any loss (including but not limited to loss of profits and consequential or indirect loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts of omissions) of FX **PROVIDED THAT** the Goods were free of safety defects at the time of delivery and the Purchaser's injuries were not the result of any safety defect in the Goods;

3.6. The Purchaser acknowledges that FX has no control over the conditions under which the Goods are applied, used, stored, transported or handled, subsequent to their dispatch by FX and the Purchaser agrees to test the Goods thoroughly before adapting them for its own use.

3.7. Nothing contained in this Clause shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of the *Australian Consumer Law* contained in Schedule 2 of the *Competition and Consumer Act 2010* or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified **PROVIDED THAT** to the extent that any such Statute permits FX to limit its liabilities to compensate or indemnify any person for breach of a condition or warranty thereby, then the respective liabilities of FX for such breach shall be limited in the case of goods to the replacement of the goods or supply of equivalent goods.

#### 4. **DELIVERY**

4.1. FX will make all reasonable efforts to have the Goods delivered in accordance with the delivery requirements set out in the FX website. However, FX will not be liable for any loss or damage howsoever arising resulting from delays in delivery.

#### 5. **RISK**

5.1. Unless otherwise agreed by the parties in writing, all risk in and title to the Goods (including all responsibility for safety, storage and handling of the Goods) will pass to the Purchaser upon Delivery.

#### 6. **PRICE**

Unless otherwise agreed by the parties in writing, the price charged for the Goods will be the price as determined by FX at the Delivery Date.

#### 7. **PAYMENT AND DEFAULT**

7.1. FX will not despatch any Goods until FX has received payment in full for the Goods.

#### 8. **INTELLECTUAL PROPERTY**

8.1. For the purposes of this provision, Intellectual Property means intellectual property, trade marks, trade dress, formulae, brands, labels, labelling designs, or other indicia of ownership or product identities imitating or resembling those of FX which are used on or associated with the Goods and in connection with the sale and distribution of the Goods and in the promotion of FX's business and the Goods.

8.2. The Purchaser agrees that all Intellectual Property is owned by FX. The Purchaser agrees not to register, use or apply or permit the registration, use or application of any Intellectual Property. The Purchaser further agrees not to associate, use or apply the Intellectual Property directly or indirectly to any business with which the Purchaser is associated in any way or to any articles or products manufactured or distributed in any form whatsoever by or for the Purchaser other than the Goods as supplied by FX.

#### 9. **FORCE MAJEURE**

FX will not incur any liability to the Purchaser in relation to any total or partial suspension by FX of manufacture, delivery or supply of goods through any circumstances outside FX's reasonable control, resulting from (without limitation) natural disasters, strikes, war or acts of terrorism, lock-outs or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents, breakdown of plant, machinery, software, hardware or communication network.

#### **PRIVACY**

As concerns Goods supplied to the Purchaser on credit, the Purchaser irrevocably authorises FX, its employees and agents to make any enquiries as FX considers desirable to investigate the credit worthiness of the Purchaser, from time to time. These enquiries may include the making of enquiries of persons nominated by the Purchaser as trade referees, the bankers of the Purchaser or any other credit providers (Information Sources) and the Purchaser hereby authorises the Information Sources to disclose to FX any information concerning the Purchaser which is within the possession of the information source and which is requested by FX.

#### 10. **SEVERANCE**

If any provision of these terms and conditions or their application is held to be invalid, illegal or unenforceable the provision will be read down to the extent necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these terms and conditions will not be affected or impaired in any way.