

TERMS AND CONDITIONS OF SEIKO AUSTRALIA PTY LTD (ABN 63 000 797 946)

The following terms and conditions apply to the sale and delivery of goods by Seiko. Amendments or variations to these conditions are not binding unless expressly confirmed by Seiko in writing referring to these conditions. In particular they override any printed terms in a standard form invoice or order form. They govern our business relationship with you and should be read carefully.

1. Definitions

The following words have the following meanings in these Terms and Conditions unless the contrary intention appears.

Goods means the goods and products (including guarantee/instruction booklets) supplied by Seiko to the Purchaser pursuant to these Terms and Conditions of Sale, and pursuant to an Order placed by the Purchaser with, and accepted by, Seiko.

Order means an order for the purchase of Goods placed by the Purchaser with Seiko.

Purchase Price means the purchase price of the Goods (including any GST and any other charges imposed by Seiko, less any discount offered by Seiko), as indicated on the invoice rendered by Seiko to the Purchaser.

Purchaser means the entity placing the Order with Seiko for the purchase of the Goods.

Seiko means Seiko Australia Pty. Ltd. (ABN 63 000 797 946).

Terms and Conditions means these Terms and Conditions of Sale.

2. Purchaser's acceptance of Terms and Conditions

The Purchaser's acknowledgement and acceptance of these Terms and Conditions in relation to any contract for the sale and purchase of the Goods is signified by the Purchaser signing the Application for Commercial Account which has these Terms and Conditions attached, or by the Purchaser placing an Order with Seiko for Goods after receipt of these Terms and Conditions.

3. Seiko approval required and all outlets to be nominated

- (a) Seiko is not required or obliged to supply any Goods to the Purchaser until the Purchaser has satisfied Seiko's requirements, such as without limitation, Seiko accepting and approving the Application for Commercial Account and/or Order from the Purchaser.
- (b) Seiko may cease supplying the Goods to the Purchaser at any time, in which case Seiko shall be entitled to recover possession of all Goods to which it has retained title under Clause 11, including by entering any premises owned or occupied by the Purchaser to repossess the Goods. To avoid doubt, the Goods also include all display material and other marketing materials supplied by Seiko to the Purchaser.
- (c) The Purchaser can only sell the Goods to the retail public (that is, consumers), unless otherwise approved by Seiko, from store locations or outlets authorised or approved by Seiko. Any approval given to the Purchaser by Seiko applies in respect of a specific location or outlet from which the Purchaser shall sell the Goods, as indicated on the Application for Commercial Account or Order, or as otherwise notified by the Purchaser to Seiko. The Purchaser cannot sell the Goods from any other location or outlet unless such location or outlet has been approved by Seiko.

4. Credit

- (a) Seiko may elect to supply the Goods to the Purchaser on credit terms designated by Seiko. The Purchaser does not have a general or automatic right to be supplied the Goods by Seiko on credit terms.
- (b) If Seiko is already supplying Goods to the Purchaser on credit, it may at any time cease supplying the Goods to that Purchaser on credit terms.

5. Sourcing and distribution of Goods

- (a) The Purchaser acknowledges that Seiko is the only authorised supplier of "Seiko" watches and other "Seiko" associated goods and products in Australia. Accordingly, the Purchaser must not purchase any "Seiko" watches or other "Seiko" associated goods and products from any entity other than Seiko.
- (b) If the Purchaser is aware that any entity other than Seiko is offering for sale in Australia "Seiko" watches and other "Seiko" associated goods and products to retailers and other entities, the Purchaser must immediately notify Seiko.
- (c) The Purchaser may only sell the Goods to the retail public (that is, consumers), and not for the purposes of resale (within or outside Australia), unless otherwise approved by Seiko, and not to any entity that is known or suspected to be purchasing the Goods for resale, and not to any entity which the Purchaser knows or ought reasonably to have known intends to re-sell or on-sell the Goods.
- (d) The Goods may only be sold by the Purchaser to the retail public (that is, consumers) from store locations and outlets approved by Seiko. **The Goods may not be sold in any other manner (such as by mail order or over the internet) unless approved by Seiko.** Notwithstanding the foregoing, Seiko permits advertising and promotion of the Goods via the Purchaser's web site *provided that* any depiction of the Goods is, in Seiko's discretion, commensurate with the high image of the trade mark under which the Goods is sold and *provided further* that the Goods are depicted with a prominent notice that they are not to be shipped or delivered to any party outside Australia (in the event that sale of the Goods is intended via the web site).

6. Trade indicia

- (a) The Purchaser acknowledges that the "Seiko" and any other trade mark, and other associated trade indicia in connection with the Goods, and the goodwill attached to such trade marks and trade indicia, are and remain the exclusive property of Seiko and/or its licensor (the "Proprietor"). The Purchaser acquires no right, title or interest in these trade marks or trade indicia pursuant to these Terms and Conditions, or as a result of purchasing the Goods. Any use of these trade marks and trade indicia on store signage or otherwise by the Purchaser is subject to approval by the Proprietor. The Purchaser shall comply with any directions given by the Proprietor with respect to the manner in which such trade marks and trade indicia are used by the Purchaser.

- (b) The Purchaser will take all practical steps to ensure that the Proprietor's reputation and goodwill in the Goods and associated trade indicia is not damaged.
- (c) The Purchaser acknowledges that a sale or disposal of any damaged or defective Goods, which is not authorised by the Proprietor, will cause damage to the Proprietor's reputation and goodwill in the Goods and associated trade indicia. The Purchaser shall be responsible and liable for such unauthorised sale or disposal, and the Purchaser will indemnify the Proprietor against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Proprietor in connection with such unauthorised sale or disposal.

7. Prices

- (a) The prices charged by Seiko to the Purchaser for the Goods are subject to change without notice. Unless otherwise indicated by Seiko, the Goods will be supplied and invoiced by Seiko to the Purchaser at Seiko's price prevailing at the time the Goods are despatched by Seiko to the Purchaser.
- (b) Any references by Seiko to "recommended retail prices" for the goods are recommendations only. There is no obligation for the Purchaser to sell the Goods for the "recommended retail price".

8. Payment

- (a) The Purchase Price shall be paid by the Purchaser to Seiko within 30 days from the "Date of Statement" as indicated on the invoice received by the Purchaser with the Goods, unless otherwise agreed to in writing by Seiko.
- (b) **If payment for the Goods is not received by Seiko within 60 days of the Date of Statement Seiko shall be entitled to charge the Purchaser interest on any outstanding Purchase Price (and any discount) at the rate of 0.8% per month until such time that payment has been received by Seiko.**
- (c) Without limitation to any other charges Seiko will apply a minimum order surcharge of \$10.00 plus GST to any Orders for Goods with a value of less than \$250 (excluding GST).
- (d) Without limitation to these Terms and Conditions, if full payment in respect of any particular invoice has not been received by the due date, Seiko is entitled:
 - (i) to rescind and terminate the contract for sale and any other contract for sale Seiko may have with the Purchaser for any Goods;
 - (ii) to refuse to supply any further Goods ;
 - (iii) to demand and receive immediate payment of any other invoice in respect of a contract for sale for any Goods whether payment is then due or not; and/or
 - (iv) to recover possession of all Goods to which it has retained title under Clause 11, in which case Seiko will credit the Purchaser with any part of the Purchase Price paid by the Purchaser to Seiko in respect of those Goods.
- (e) The Purchaser will indemnify Seiko against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Seiko in connection with the Purchaser's failure to pay on the due date.

9. Orders

- (a) Seiko shall be under no obligation to accept the whole or any part of any Order.
- (b) An Order constitutes an offer by the Purchaser to purchase the Goods on and subject to these Terms and Conditions.
- (c) Acceptance of any Order, or part of any Order, occurs when the Goods the subject of the Order, are delivered to the Purchaser, or otherwise as notified by Seiko to the Purchaser.

10. Delivery

- (a) Seiko will bear the costs of delivery of the Goods to the Purchaser. Where the Purchaser has special delivery requirements, outside the normal Seiko delivery schedules, the Purchaser will bear the cost of the delivery of the goods to the Purchaser.
- (b) Seiko may supply the Goods through any related corporation. Delivery may be made by Seiko or its contractors or agents.
- (c) Delivery shall be deemed to have been made on receipt by the Purchaser, or its contractor or agent, of the Goods.
- (d) Seiko shall not be liable for any loss or damage, including consequential loss, suffered by the Purchaser arising from or related to any late delivery or failure to make delivery of an Order whether in whole or in part.

11. Title and risk

- (a) The risk of loss of, or damage to, the Goods shall pass to the Purchaser from the time of delivery and receipt of the Goods by or on behalf of the Purchaser.
- (b) Title and ownership to the Goods delivered does not pass to the Purchaser until such time as the following:
 - (i) payment of the Purchase Price (and any outstanding interest) in full for those Goods has been received by Seiko; or
 - (ii) the Purchaser sells the Goods to its retail customers in the ordinary and usual course of its business, in which case, such sale is by the Purchaser as bailee and the Purchaser shall hold the proceeds of the sale on trust for Seiko until payment in full for those Goods has been received by Seiko
- (c) Until title passes to the Purchaser, the Purchaser is in a fiduciary relationship with Seiko and is a bailee only of the Goods, and the Purchaser shall do all things necessary to protect and maintain Seiko's title and right to possession in and to the Goods. In addition, until title passes to the Purchaser, the Goods as kept by the Purchaser must be readily distinguishable from other property owned or held by the Purchaser.

- (d) Without limiting any other remedies Seiko may have, if payment is not made by the Purchaser by the due date, Seiko may, without giving notice to the Purchaser, enter the premises where Seiko reasonably believes the Goods are situated and re-take possession of the Goods

12. PERSONAL PROPERTY AND SECURITIES ACT 2009 (Cth) ("PPSA")

- (a) Defined terms in clause have the same meaning as given to them in the PPSA.
- (b) The parties acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in Seiko's favour over the goods supplied or to be supplied to the Purchaser as the Grantor pursuant to these Terms and Conditions.
- (c) The goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Purchaser pursuant to these terms.
- (d) The parties acknowledge that Seiko, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the Purchaser, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.
- (e) To the extent permissible at law, the Purchaser:
- (i) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to Seiko.
- (ii) agrees to indemnify Seiko on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
- A. registration or amendment or discharge of any Financing Statement registered by or on behalf of Seiko; and
- B. enforcement or attempted enforcement of any Security Interest granted to Seiko by the Purchaser.
- (iii) agrees that nothing in sections 130 to 143 of the PPSA will apply to these Terms and Conditions or the Security under these Terms and Conditions;
- (iv) agrees to waive its right to do any of the following under the PPSA:
- A. receive notice of removal of an Accession under section 95;
- B. receive notice of an intention to seize Collateral under section 123;
- C. object to the purchase of the Collateral by the Secured Party under section 129;
- D. receive notice of disposal of Collateral under section 130;
- E. receive a Statement of Account if there is no disposal under section 130(4);
- F. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- G. receive notice of retention of Collateral under section 135;
- H. redeem the Collateral under section 142; and
- I. reinstate the Security Agreement under section 143.

13. Return of "incorrect" or defective Goods

- (a) If any Goods received by the Purchaser do not correlate to, or are not, the Goods ordered by the Purchaser, or if a defect exists in any Good or its packaging and that defect occurred or existed prior to receipt by the Purchaser, the Purchaser may return the Goods in accordance with this Clause 13.
- (b) The Purchaser must obtain from Seiko a "SAPL Claim Number" before any Good is returned to Seiko under this Clause 13. A "SAPL Claim Number" can be obtained by the Purchaser contacting Seiko's Warehouse Macquarie Park on (02) 9805 4660.
- (c) Seiko will issue a "SAPL Claim Number" and authority for the return of the Goods provided that the request for such returns is made by the Purchaser within 7 days of receipt of the Goods.
- (d) Goods returned must be in a "as new condition" (or at least in a condition no worse than the condition in which they were received by the Purchaser). Returns will not be accepted for Goods in the following conditions.
- (i) Soiled, marked or otherwise damaged.
- (ii) Where Instruction/Guarantee Books and Presentation Boxes are not returned with the Goods.
- (e) Seiko will arrange for Seiko's designated carrier to pick up the Goods to be returned from the Purchaser and return them to Seiko.
- (f) If the Purchaser returns any Goods to Seiko which do not satisfy the requirements of this Clause 13, such Goods may be re-delivered by Seiko to the Purchaser at the Purchaser's expense. For purposes of this Clause and these Terms and Conditions generally, the Purchaser authorises Seiko to set-off against and deduct from all or any amounts (if any) payable to the Purchaser (such as under a credit note issued under this Clause 13), any amount owing by the Purchaser to Seiko on any account.
- (g) The Purchaser may return Goods under this Clause provided it uses a Seiko nominated or approved carrier, in which case Seiko will bear the delivery costs provided the other requirements of this Clause 13 are satisfied. If this paragraph (g) is not complied with, the costs of delivery of the returned Goods shall be the Purchaser's responsibility.
- (h) The "SAPL Claim Number" must be indicated by the Purchaser on the outside of the package/carton holding the Goods when returning the Goods to Seiko. Such package/carton must be addressed to "The Credit Control Office (Warehouse), SAPL, 10 Giffnock Ave, Macquarie Park NSW 2113."

- (i) The Purchaser must also comply with the requirements of "Seiko's Returns Procedure Policy", which policy will be supplied by Seiko to the Purchaser upon Seiko accepting the Purchaser's Application for Commercial Account or after the Purchaser's first Order for Goods after receipt of these Terms and Conditions.

- (j) Any credit note generated by Seiko relating to authorised returns of Goods under this Clause 13 will reflect the appropriate GST adjustments.

14. Other claims (no return of Goods)

- (a) Where the Goods (by number or quantity) invoiced to the Purchaser are less than the Goods (by number or quantity) received by the Purchaser, the Purchaser must so advise Seiko by telephone or fax, on receipt of the Goods, giving full details of the deficiency. The Purchaser must then state the claim in writing within 7 days from receipt of the Goods.
- (b) If Goods ordered by the Purchaser have not been received by the Purchaser within a period of [14] days after Seiko's receipt of the Order, the Purchaser must immediately advise Seiko in writing of such non-receipt.
- (c) If an invoice accompanying Goods received by the Purchaser seeks to charge the Purchaser prices for the Goods which do not correlate to Seiko's [wholesale] prices prevailing at the time the Goods are despatched by Seiko to the Purchaser (as contemplated under Clause 7(a)), the Purchaser must advise Seiko in writing within 7 days of receipt of the Goods.
- (d) Any claims by the Purchaser under this Clause 14 must be fully documented quoting the respective Seiko invoice and Order number, and must be forwarded by the Purchaser to Seiko's "Accounts Receivable Section" within the time periods prescribed by this Clause 14.
- (e) Any claims by the Purchaser under this Clause 14 will be examined and investigated by Seiko before a decision is made with respect to the outcome of the claim. A rejection by Seiko of any claim will be notified to the Purchaser in writing.
- (f) Any credit note generated by Seiko relating to claims under this Clause 14 will reflect the appropriate GST adjustments.

15. Warranties and conditions

- (a) To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions and Seiko is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Purchaser for:
- (i) any increased costs or expenses;
- (ii) any loss of profit, revenue, business, contracts or anticipated savings;
- (iii) any loss or damage to the Goods resulting from any act or omission on the part of the Purchaser, or the employees, contractors or agents of the Purchaser; and
- (iv) any loss or expense resulting from a claim by a third party; or
- (v) any special, indirect or consequential loss or damage of any nature whatsoever incurred by the Purchaser or its customer caused by Seiko's failure to complete or delay in completing the order to deliver the Goods.
- (b) To the extent that any such statute permits Seiko to limit its liabilities to compensate or indemnify any entity for breach of an implied condition or warranty, the respective liabilities of Seiko for such breach shall be limited to the replacement of the Goods only.
- (c) To the full extent permitted by law, the Purchaser will indemnify Seiko and keep Seiko indemnified from and against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Seiko in connection with any breach of these Terms and Conditions by the Purchaser or its representatives.
- (d) Subject to this Clause 15 and any legislation to the contrary:
- (i) representations and agreements not expressly contained in these Terms and Conditions shall not be binding upon Seiko as conditions, warranties or representations; and
- (ii) Seiko shall be under no liability to the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or for damaged persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of Seiko or Seiko's agents; and
- (iii) the Purchaser shall indemnify Seiko against any claims made against Seiko by any third party in respect of any such loss, damage, death or injury as set out in sub-paragraph (ii).
- (e) Seiko may offer or provide technical information or advice to the Purchaser in connection with the use and supply of the Goods. Seiko shall have no responsibility or liability for the content or use of, or reliance on, such information or advice.

16. Rescission

- (a) Seiko may, in addition to any other course of action available to it, elect to terminate or rescind any contract of sale for any Goods by notice in writing to the Purchaser in the event that the Purchaser:
- (i) becomes insolvent or bankrupt, or any proceedings or actions are commenced with respect to the insolvency or bankruptcy of the Purchaser; or
- (ii) commits a breach of these Terms and Conditions and fails to remedy such breach after being given 7 days written notice by Seiko to do so.
- (b) On termination or rescission, all invoices rendered by Seiko are payable immediately.

17. Purchaser's warranties

The Purchaser warrants as follows:

- (a) The Purchaser is a party to a contract for sale of the Goods as a principal in its own right. If the Purchaser acts as agents or trustee of a trust, the Purchaser agrees to inform Seiko in writing of the details of this relationship.
- (b) Any financial or other information Seiko may require the Purchaser to give in relation to the Purchaser's business, premises or in connection with the resale of the Goods is true and accurate and the Purchaser will keep Seiko informed of any material adverse change to such information.
- (c) The Purchaser will not make any representations or claims about the Goods to customers to whom it sells the Goods which are false and misleading.
- (d) The Purchaser will comply with all legislation, laws and regulations, and hold all requisite Federal, State and/or Local Government, and other relevant and applicable regulatory, permits and/or licences to allow the Purchaser to purchase, use and/or sell the Goods and, where applicable, to warehouse, transport and distribute the Goods and agrees to provide Seiko, at Seiko's request, with copies of appropriate permits and licences.
- (e) The rights and obligations of the Purchaser under these Terms and Conditions are personal. They cannot be assigned, charged or otherwise dealt with, and the Purchaser shall not attempt or purport to do so.
- (f) The Purchaser shall take all steps, execute all documents and do everything reasonably required by Seiko to give effect to any of the transactions contemplated by these Terms and Conditions.
- (g) Without limitation, the rights, powers and remedies provided to or in favour of Seiko in these Terms and Conditions are in addition to, and do not exclude, prejudice or limit, any right, power or remedy provided by law, equity or otherwise.
- (h) These Terms and Conditions, and any associated contract for the sale and purchase of the Goods, is to be governed and construed in accordance with the laws in effect in New South Wales and Seiko and the Purchaser accept the non-exclusive jurisdiction of the Courts of New South Wales in relation to any dispute between them.

Updated: August 2018

18. General

- (a) Except as expressly provided in these Terms and Conditions, these Terms and Conditions constitute an exclusive statement of the agreement between Seiko and the Purchaser with respect to sales and purchases of the Goods, despite any provisions to a contrary effect in any Order or any other document. These Terms and Conditions supersede all prior arrangements, written or oral.
- (b) Seiko may vary or change these Terms and Conditions at any time by giving written notice to the Purchaser, in which case, the varied or changed Terms and Conditions will apply to any further Orders of Goods placed by the Purchaser with Seiko.
- (c) No failure by Seiko to exercise and no delay by Seiko in exercising any right, power or remedy under these Terms and Conditions will operate as a waiver. Nor will any single or partial exercise by Seiko of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (d) Any provision of these Terms and Conditions which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of these Terms and Conditions nor affect the validity or enforceability of that provision in any other jurisdiction.