

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these Sale Conditions:

Citizen means Citizen Watches Australia Pty Limited ABN 14 000 496 720 of Building 10, 49 Frenchs Forest Road, Frenchs Forest NSW 2086

Citizen Returns Policy is the returns policy, which will be provided to the Customer and which can be found on Citizen's website, which sets out the procedure that needs to be followed when goods are rejected by the Customer as not being in accordance with any Order, which may be varied from time to time.

Citizen's Website is www.citizenwatches.com.au.

Claim means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to the Goods or any delay or failure in supplying the Goods.

Customer means the party or parties to whom Citizen supplies the Goods. If the Customer consists of more than one party, these Sale Conditions bind them jointly and each of them severally.

Goods means all goods supplied by Citizen.

GST, GST Law and other terms used in clause 10 which have definitions in the *A New Tax System (Goods and Services Tax) Act 1999* have the meanings provided in those definitions and any other applicable legislation and ruling whether binding or non-binding.

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) Patents, copyrights, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and
- (b) A licence or other right to use or to grant the use of any of the above or any application or right to apply for registration of any of the rights referred to in paragraph (a).

Invoice means the invoice issued by Citizen to the Customer in respect of the Goods purchased from Citizen, or where credit has been applied for by the Customer by a credit application to Citizen, any statement of account issued by Citizen to the Customer in respect of the Goods purchased from Citizen.

Order means the order placed by the Customer to purchase Goods from Citizen.

Price means the price for the Goods as stated in the Invoice issued by Citizen.

Retailer means any person or entity that accepts Goods with a view to selling the Goods to a third party.

2. GENERAL

All Orders are accepted and Goods supplied subject to the Sale Conditions and save to the extent that the exclusion or restriction of liability may be prohibited by statute, all other conditions, warranties and representations whether implied, statutory or otherwise, except as to title, are hereby excluded. Any Order placed by a Customer shall constitute an offer to contract upon these express terms and conditions, and no addition or variation whether contained in the Customer's Order or otherwise shall apply unless expressly agreed in writing by a Citizen authorised representative.

3. ORDERS

All Orders are subject to the availability of goods and to acceptance by Citizen's authorised representative. All Orders must be received by telephone, fax, EDI or via CSD units.

4. CUSTOMER'S ACKNOWLEDGEMENTS

4.1 The Customer acknowledges that:

- (a) it has satisfied itself that the Goods are fit for their respective purposes; and
- (b) the Order for the Goods placed by the Customer with Citizen is and remains firm and irrevocable.

5. CUSTOMER'S OBLIGATIONS AND RETURNS

5.1 The Customer must thoroughly check the Goods upon delivery.

5.2 Where goods are rejected by the Customer as not being in accordance with the Customer's Order, Citizen will only accept the return of such Goods in accordance with Citizen's Returns Policy.

5.3 The Customer must not represent to third parties that it has any authority to bind Citizen.

6. DELIVERY, RISK AND TITLE

6.1 Citizen will make all reasonable endeavours to fill the Order placed by the Customer but will not be liable to the Customer for any failure to

do so or for any failure or delay in shipment of the Order due to any cause whatsoever.

6.2 All goods delivered to the Customer by Citizen remain the sole and absolute property of Citizen. No right, title or interest of any kind in or to any Goods passes to the Customer until Citizen receives payment of the amounts owing under all Invoices in full in respect of all Goods issued by Citizen to the Customer.

6.3 The risk of any loss or damage to the Goods passes to the Customer when the goods are delivered to the Customer's premises.

7. RETENTION OF TITLE

7.1 Until payment in full by the Customer, the Customer undertakes to store the Goods on its premises separately from any other goods it possesses and in a manner, which the Goods are readily identifiable as Citizen's Goods.

7.2 The Customer's right to possession shall cease if the Customer does anything or fails to do anything, which would entitle a receiver to take possession of any of the Customer's assets.

7.3 Citizen may, for the purposes of examination or recovery of the Goods, enter upon any premises owned or controlled by the Customer where the Goods are stored or where they are reasonably thought to be stored.

8. PRICE AND PAYMENT

8.1 The Customer must pay Citizen:

- (a) the Price for the Goods supplied under these Sale Conditions;
- (b) any GST attributable to the Price; and
- (c) all costs incurred by Citizen in delivering the Goods to the Customer, including but not limited to all freight and insurance costs.

8.2 Citizen must provide an Invoice to the Customer for amounts due under clause 8.1 on delivery of the Goods to the Customer's premises.

8.3 The Customer must pay any Invoice issued in accordance with these Sale Conditions within 30 days after its receipt. Payment for goods may be by cash, cheque, direct deposit, electronic bank transfer, Bankcard, MasterCard or Visa, or as agreed with Citizen.

8.4 If the Customer fails to pay any amount owing in accordance with clause 8.3, Citizen will be entitled to charge interest on that amount owing at the rate of 1.25% per annum, calculated daily, commencing on the day after payment of the Invoice was due until the date of actual payment. Citizen may also, at its discretion, withhold any further deliveries or cancel any outstanding Orders without notice to the Customer.

8.5 Citizen will offer extended payment terms to Customers that agree to order a set quantity of Goods periodically (**Special Order**), at the sole discretion of Citizen. The due date(s) for payment will be specified in the initial Invoice to the Customer making the Special Order.

9. WITHDRAWAL OF CREDIT

Citizen may withdraw credit from the Customer at any time without prior notice.

10. GST

10.1 Notwithstanding any other provision of these Sale Conditions:

- (a) If GST applies to any supply made by either party under or in connection with these Sale Conditions, the consideration provided or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply; and
- (b) If the imposition of GST or any subsequent change in the GST Law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause "taxes") the consideration payable by the recipient of the supply made under these Sale Conditions will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.

10.2 Each party warrants that at the time any supply is made under these Sale Conditions on which GST is imposed, that party is or will be registered under the GST Law. If the other party requests written evidence of registration, the party claiming to be registered will promptly produce evidence satisfactory to the party seeking such evidence.

- 10.3 Any Invoice rendered by a party in connection with a supply under these Sale Conditions which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice (as that term is defined in the GST Law) (**Tax Invoice**). If requested to do so by the recipient of the supply, the supplier must provide a Tax Invoice within 28 days.
- 11. CANCELLATION OF ORDERS**
Requests by a Customer for cancellation of any Order or for rescheduling of deliveries will only be considered by Citizen if made in writing. The Customer must pay to Citizen an amount equal to all costs incurred in the preparation and delivery of the Order and its cancellation or rescheduling.
- 12. CUSTOMER DEFAULT**
If: (a) the Customer defaults or commits any breach of any of its obligations to Citizen; or (b) the Customer at any time becomes bankrupt or, if an incorporated body, any resolution or petition to wind up its business is passed or presented otherwise than for reconstruction or amalgamation, or if a liquidator or receiver or manager is approved to such corporate body or its undertaking property or assets or any part thereof, or if the Customer is insolvent or is unable, or admits its liability, to meet its commitments promptly as and when due, then Citizen may (without prejudice to any other claims or rights which Citizen might have) immediately cancel any uncompleted Order or cancel or suspend delivery. In addition, and notwithstanding any other provisions of Citizen's Sale Conditions, payments for any delivery already made shall immediately become due.
- 13. FORCE MAJEURE**
Citizen is not liable for the cancellation or partial delivery of any Order or part Order if performance by Citizen is prevented or delayed directly or indirectly by any cause beyond the reasonable control of Citizen whether such cause existed or was foreseeable at the date of acceptance of the Customer's Order by Citizen or not.
- 14. INDEMNITY**
The Customer indemnifies Citizen, its employees, agents and contractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result of, whether directly or indirectly, any failure of the Customer to perform any of its obligations under these Sales Conditions or as a result of any Claim, except to the extent the Claim arises due to the negligence of Citizen, its employees, agents or contractors.
- 15. LIMITATION AND EXCLUSION OF LIABILITY**
15.1 Citizen does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of these Sale Conditions to be void (**Non-excludable Condition**).
15.2 For a breach of any Non-excludable Condition, Citizen's total liability to the Customer is limited, at Citizen's option, to either of the following:
(a) supplying, repairing or replacing; or
(b) paying the cost of supplying, repairing or replacing, the Goods in respect of which the breach occurred.
If a breach of any Non-excludable Condition relates to the provision of services, Citizen's total liability to the Customer is limited, at Citizen's option, to either of the following:
(i) resupplying; or
(ii) paying the cost of resupplying, the services in respect of which a breach occurred.
15.3 Citizen excludes:
(a) all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition, including without limitation all warranties that the Goods are fit for any particular purpose, safe, of a particular condition, suitability or quality or efficacious for any particular use; and
(b) all liability to the Customer for consequential or indirect damages arising out of or in relation to the Goods or any delay or other failure in supplying any Goods or these Sale Conditions, even if:
(i) Citizen knew such damages were possible; or
(ii) Such damages were otherwise foreseeable,
Including, without limitation, lost profits and damage suffered as a result of Claims by any third person, such as a customer of the Customer.
15.4 The Customer acknowledges the limitation and exclusion of Citizen's liability under this clause.
- 16. RESTRICTIONS ON SALE**
The Customer must not on-sell any Goods purchased from Citizen to Retailers. The Customer must not on-sell the Goods through the internet, including but not limited to eBay, except where it obtains the prior written consent of Citizen, which may be withheld in its absolute discretion.
- 17. INTELLECTUAL PROPERTY**
17.1 All Intellectual Property Rights relating in any way to Citizen's products, business, activities and operations are the sole and exclusive property of Citizen. The Customer must not infringe any Intellectual Property Rights of Citizen.
17.2 The Customer must not use, copy, alter, modify, reproduce or develop any derivative work based on any of the Intellectual Property Rights relating in any way to Citizen's products, business, activities and operations, for its own benefit or for the benefit of any third party, without the prior written consent of Citizen.
17.3 The Customer must not claim to be the author of any of the Intellectual Property Rights relating in any way to Citizen's products, business, activities and operations to any third party.
- 18. IN STORE DISPLAY MATERIALS**
All in store marketing and promotional materials supplied by Citizen to Customer, including product display stands and cabinets, are the sole and exclusive property of Citizen and remain at all times the property of Citizen. The Customer undertakes to use and display such materials only as directed from time to time by Citizen and to return such materials to Citizen immediately upon receiving a request from Citizen.
- 19. USE IN MARKETING**
The Customer grants Citizen the right to refer to the Customer's use of the Goods in its marketing and advertising materials and promotions, including photographs or videos of the Goods supplied or installed, provided that such reference does not compromise the Customer's reasonable security requirements.
- 20. INDEPENDENT CONTRACTORS**
The relationship between the parties is that of independent contractors and these Sale Conditions do not create a relationship of employment, agency, partnership, quasi-partnership, joint venture or any other relationship which would make one party liable for any act or omission of the other, Neither party will make warranties or representations or assume any obligations on the other party's behalf
- 21. ASSIGNMENT**
A party may not assign these Sale Conditions or otherwise transfer its rights or the benefits of these Sale Conditions without the prior written consent of the other party, provided that Citizen may assign these Sale Conditions to a related body corporate of Citizen (as such term is defined in the Corporations Act 2001(Cth))
- 22. SUBJECT TO CHANGE**
These Sale Conditions are subject to change by Citizen, and may be varied or amended from time to time, at Citizen's sole discretion.
- 23. ENTIRE AGREEMENT**
22.1 These Sale Conditions embody the entire agreement between the parties with respect to its subject matter and supersedes and replaces any prior negotiation, arrangement, understanding or agreement with respect to the subject matter or any term of these Sale Conditions
22.2 The Customer has not relied on any representation made by or on behalf of Citizen in entering this agreement, other than those expressly made in these Sale Conditions
- 24. SEVERABILITY**
If any provision of these Sale Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Sale Conditions and the remainder of the provisions in question shall not be affected by that.
- 25. GOVERNING LAW AND JURISDICTION**
These Sale Conditions are governed by the laws of New South Wales and the parties agree to submit to the New South Wales Courts to resolve any dispute in relation to the meaning or application of these Sale Conditions.