

JCD IDEAS HOLDINGS PTY LIMITED
ACN 126 150 098
ABN 31 126 150 198

TERMS AND CONDITIONS OF SALE

Definitions

1. In these terms and conditions agreement means any agreement or contract entered into for the provision of goods and/or services by Caféideas to the customer.
2. "Caféideas" means JCD Ideas Holdings Pty Limited of 111-113 Regent Street, Chippendale NSW 2008. The "customer" means any person, firm or corporation requiring goods or services from Caféideas. "Goods" means goods supplied from Caféideas to the customer or purchaser. "GST" means the goods and services tax as defined in a *New Tax System (Goods & Services Tax) Act 1999* as amended. "Terms" means these terms and Conditions of Sale.
3. The customer wishes to buy goods and services from Caféideas.
4. Caféideas has decided to sell and/or provide the goods and services to the customer.

Basis of Agreement

5. No amendment, alteration, waiver or cancellation of any of these terms is binding on Caféideas unless confirmed by Caféideas in writing. The customer acknowledges that no employee or agent of Caféideas is authorised to make any representation, warranty or promise in relation to the goods sold pursuant to this agreement or these terms of sale, other than as contained in these terms or as confirmed in writing by Caféideas.
6. Any written quotation provided by Caféideas to any of its customers concerning the supply of goods and services is:
 - (i) valid for thirty (30) days;
 - (ii) an invitation to treat only;
 - (iii) subject to the customer offering to enter into an agreement in accordance with these terms. Such agreement shall be deemed to be accepted by Caféideas when Caféideas confirms its acceptance of such offer in writing or by electronic means or delivers goods to the customer.
7. Caféideas has no obligation to accept any offer from any customer and may by notice in writing vary or amend these terms at any time, provided that such variation or amendment would only apply to offers accepted by the customer after the date of such notice of variation.
8. All prices quoted in the written quotation or verbally to the customer for the supply of goods include GST and other taxes and duties payable in respect of the goods unless stated otherwise.

Payment

9. Unless Caféideas shall otherwise agree, payment for goods and services must be made in full prior to delivery of the goods or provision of any services. Payment by cheques are not made until the payments under the proceeds of the cheques are cleared.
10. Payment terms may be revoked or amended at the sole discretion of Caféideas by Caféideas giving written notice to the customer.

Passing of Property

11. (a) Until the full payment in cleared funds is received by Caféideas for all goods to be supplied by Caféideas to the customer as well as any other amount which may be owing to Caféideas by the customer:
 - (i) title and property in all goods remains vested in Caféideas and do not pass to the customer and in the event that goods have been delivered by Caféideas to the customer and no title to the said goods shall pass to the customer who shall hold the said goods as fiduciary bailee and agent for Caféideas;
 - (ii) Caféideas may without notice enter any premises where it suspects any such goods may be and remove them, notwithstanding that they have been attached to other goods, not the property of Caféideas and the customer irrevocably licences Caféideas to enter such premises without liability for trespass or any resulting damage and indemnifies Caféideas against all claims, actions, suits and demands brought by any party arising out of such action;
 - (iii) Subject to, and in accordance with the Personal Property Securities Act 2009, to keep or resell any Goods repossessed pursuant to paragraph (ii) above.
- (b) if the goods are resold, or products manufactured using the goods are sold, by the customer, the customer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of Caféideas upon request. Notwithstanding the provisions above Caféideas shall be entitled to maintain an action against the customer for the purchase price and the risk of the goods shall pass to the customer upon delivery.

Risk and Insurance

12. Any risk in the goods and any responsibility to cover the goods by insurance in respect of theft, damage or otherwise passes to the customer upon the goods being dispatched to the customer or collection of the goods by the customer, the customer's agent or courier as the case may be.

Acknowledgments by the Customer

13. The customer acknowledges that:

- (i) it has not relied on any advice, recommendation, information or assistance provided Caféideas or any employee or agent of Caféideas in relation to the sale of goods and/or services or the use or application of such goods or services;
- (ii) the customer has the sole responsibility to satisfy itself that the goods or services are suitable for the use of the customer or any contemplated use by the customer whether or not such use is known to Caféideas; and
- (iii) any description of goods provided in a quotation or notice is given by way of identification only and the use of such description does not constitute a contract of sale by description;
- (iv) the customer must provide to Caféideas particulars of its Australian business number, its order number and the quantity and model number, its delivery address and insurance details when Caféideas requests it.
- (v) once a deposit has been paid, goods may be held for a maximum of 8 weeks only from date of order at the Caféideas Warehouse. Should any order(s) be required to be held longer by Caféideas, a 5% charge will be incurred based on the purchase price of the order per week until the goods are ready to be picked up or dispatched.

Delivery

- 14. Caféideas shall provide to the customer the estimated dates of delivery and will use its best endeavours to maintain such estimates, but shall not be liable to the customer in the event that such estimates cannot be maintained.
- 15. The obligations of Caféideas as to delivery shall extend to the delivery of goods to the kerbside or street level only. In the event that there are additional delivery requirements the customer shall notify Caféideas at a reasonable time prior to any such delivery and any additional costs thereby incurred shall be to the customer's expense.

Inspection and Return of Goods

- 16. Unless the customer has inspected the goods and given written notice to Caféideas within two (2) business days of delivery that the goods do not comply with the relevant specifications or descriptions, the goods shall be deemed to have been accepted in good order and condition and no claim for credit, non-delivery or repair of goods shall be accepted unless notification is made within two (2) days in writing to Caféideas.
- 17. In the event that Caféideas otherwise accepts the return of goods for credit, such credit will endure for a maximum of twelve (12) months from the date of first sale to the customer of the returned goods and any such return will be liable to a re-stocking fee being not less than 25% of the invoice value of the goods.
- 18. In the event that Caféideas accepts the return of goods for credit, the customer remains liable for the costs of re-delivering the goods to the manufacturer and shall be liable to pay Caféideas such costs.
- 19. Nothing in these terms shall oblige Caféideas to accept returns of goods for credit if such goods were damaged during their assembly or installation and nothing shall oblige Caféideas to pay any of the costs of assembly or installation or make it responsible for any losses arising from defective assembly or installation and nothing in this clause shall affect the construction of Clause 19 of these terms.
- 20.
 - (a) Nothing in these terms shall oblige Caféideas to accept the return of custom made goods or goods manufactured to the customers agreed specifications. The customer acknowledges that they shall hold Caféideas harmless from any claims for losses, damages, law suits and claims of whatsoever arising from the delivery of customized goods to the customers specifications.
 - (b) The customer shall not be entitled to any refund for moneys paid in relation to the manufacture, cancellation or return of customized goods.

Cancellation of Orders

- 21. No order may be cancelled, modified or deferred without the prior written consent of Caféideas and if Caféideas shall consent to any cancellation, modification or deferral the customer shall reimburse it for all losses including loss of profits and shall be liable to pay a cancellation and re-stocking fee being not less than 25% of the invoice value of the goods.

The limitation of liability of Caféideas

- 22.
 - (a) Subject to paragraph (b) and to the extent permitted by the Australian Consumer Law and relevant state legislation, the sole obligation of Caféideas under this agreement is to use its best endeavours to provide the products or to repair the products or repair or replace (at Caféideas's discretion) any part of a product which is found to be defective during the *[period of warranty]* and in no event shall Caféideas be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the products, and any indirect, special or consequential damages or injury to any person, corporation or other entity.
 - (b) If any products supplied pursuant to this agreement are supplied to the customer as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law as amended or relevant state legislation the consumer will have the benefit of certain non-excludable rights and remedies in respect of the products or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred. However, if the product is a product not ordinarily acquired for personal, domestic or household use or consumption, pursuant to section 64A of the Australian Consumer Law and similar provisions of relevant state legislation Caféideas limits its liability to payment of an amount equal to the lowest of:
 - (i) the cost of replacing the goods or supplying equivalent goods;
 - (ii) the cost of repair of the goods;
 - (iii) the cost of having the goods repaired or replaced.

- (c) Subject to paragraph (b) Caféideas is not liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of Caféideas.
- (d) Subject to paragraph (b), Caféideas is not responsible for any loss caused by an error or defect in the products or errors or faults caused by *[description of components or consumable likely to cause failure of product]* supplied by any person.

Warranties

23. Subject to these terms:

- (i) Caféideas at its discretion may repair or replace any goods to remedy any failure due to faulty workmanship or materials, provided that such goods may have acceptable variance (as determined by Caféideas).
- (ii) the customer acknowledges that any warranty given in respect of plant and equipment is the warranty of the manufacturer of the goods and that Caféideas is not responsible for such warranties and gives no warranty of its own in respect of the said goods;
- (iii) Caféideas, or its representatives, being given access to the goods for the purpose of inspection and rectification of any claim;
- (iv) the customer not having repaired or undertaken to repair the goods without the prior authorisation of Caféideas nor altering the goods in any way;
- (v) the customer having used and maintained the goods in accordance with the manufacturer's recommendations, their failure not being the result of incorrect or poor maintenance by the customer;
- (vi) the customer acknowledging that it has not relied upon any advice given by Café Ideas, its agents, servants, representatives or employees in relation to the suitability for any purposes of the goods

Linked Credit Contracts

- 24. (a) Caféideas may from time to time offer credit contracts by financiers to customers;
- (b) The customer acknowledges that they have received a copy of the credit contract from Caféideas at the time of executing the Terms and Conditions of sale;
- (c) Caféideas discloses that it may receive a commission from the credit provider for referring the customer to the credit provider;
- (d) Caféideas has advised the customer to seek their own independent legal advice prior to entering into the credit contract and/or approach a credit provider of the customer's own choice;
- (e) Caféideas shall not be liable for any claims for damages arising from the customer entering into any credit contract with the credit provider and the customer shall satisfy themselves of all matters arising from the credit contract and shall indemnify and hold harmless Caféideas for any damages and losses arising from the credit contract.

Miscellaneous

- 25. This agreement shall be construed in accordance with the laws of the State of New South Wales and the parties agree to the non-exclusive jurisdiction of the Courts of the State of New South Wales and of Courts entitled to hear appeals from these Courts.
- 26. Failure by Caféideas to enforce any of these terms shall not be construed as a waiver of any of Caféideas's rights.
- 27. If any of the terms of this agreement shall be unenforceable such terms shall be read down so as to make it enforceable or if it cannot be read down the condition shall be severed from these terms without affecting the enforceability of the remaining terms and conditions.
- 28. Any notices given by either party to this agreement may be delivered personally or sent by facsimile or pre-paid mail to the last known address of the addressee and shall be deemed to be received upon posting or receipt of facsimile transmission or email.

Waiver and Assignment

- 29. No failure by Caféideas to insist on strict performance of any of any terms in these terms is a waiver of any right or remedy which Caféideas may have and is not a waiver of any subsequent breach or default by the customer.
- 30. Neither the agreement nor any rights arising under the agreement may be assigned by the customer without the prior written consent of Caféideas which it may give or refuse at its absolute discretion.