



Terms of Sale

Johns Group Pty Ltd ACN 643 369 813 trading as Pro Facemask

Details

1. Background

The term and conditions contained in this Terms of Sale constitute a legally binding contract between Johns Group Pty Ltd ACN 643 369 813 (**Pro Facemask, Company, We, Our, Us and other similar terms**) and You (**Customer, You, Your and other similar terms**). These terms and conditions apply to the Goods ordered by Customer via Our website located at the URL www.profacemask.com.au (**Site**)

Our contact information is as follows:

Johns Group Pty Ltd ACN 643 369 813

6, McGee Avenue, Wamberal NSW 2260

Email: admin@profacemask.com.au

2. Offer to purchase

The terms and conditions in this document apply after You have made an Offer to purchase the selected Goods from the Company at the prices indicated. The price of the Goods includes:

- (a) the Goods ordered;
- (b) any applicable taxes;
- (c) shipping costs (if applicable) as shown;
- (d) insurance to the Customer's delivery address.

3. Acknowledgment

- (a) You acknowledge and agree that You have had sufficient opportunity to read and understand the terms and conditions on which We are prepared to accept Your Offer and that You are legally able to make such an Offer.
- (b) You acknowledge that these terms and conditions were brought to Your attention prior to making the Offer to purchase the selected Goods.
- (c) If making an Offer, You warrant that:
 - (i) the information provided regarding the delivery address and Your contact information is accurate;
 - (ii) You understand that We may contact You to confirm the details that you have provided to Us in regard to your Offer and your Account with Us.
- (d) By clicking the "I accept" button, You are agreeing that the terms and conditions contained in this document apply to the Goods purchased.

2. Definitions & interpretation

2.1. Definitions

In this Terms of Sale, unless the context or subject matter otherwise requires:

Account means the details including a user name and password that provides You with access to Our Site to view Your Order history.

Agreement means the terms and conditions contained in this Terms of Sale, including the selected Goods, the Returns Policy, any schedules, annexures or documents incorporated by reference.

Anticipated Shipping Time means the amount of time that the Company expects that it will take before the Goods will be delivered.

Australian Consumer Law means the law as set out in the *Competition and Consumer Act 2010* (Cth).

Consequential Loss means any indirect, special or consequential loss or damage and any loss of income, loss of revenue, loss of profit, loss of production, loss of goodwill, loss of use, loss of financial opportunity, financing costs, loss of business or loss of business opportunity, loss of contract, loss from third party claims or failure to realise anticipated savings (whether the loss is direct or indirect).

Goods means those items which the Customer has offered to purchase from Pro Facemask as shown on Our Site at the time You agreed to be bound by these terms and conditions.

GST means Goods and services tax or other tax that is substituted or replaces the GST tax.

Offer means the offer by the Customer to purchase the selected Goods as shown on Our Site at the time You agreed to be bound to these terms and conditions.

Order means an Offer which has been accepted by the Company to provide the Goods to the Customer on the terms contained in this Agreement.

Parties or **Party** means the Pro Facemask and the Customer that are parties to this Agreement as the case and the context requires.

Price means the total amount of money to be paid for the Goods shown on the Order received from the Customer.

Returns Policy means the Company's policy by which it will allow Customer to return Goods as provided on Our Site.

2.2. Interpretation

In this Agreement:

- (a) a reference to:
 - (i) one (1) gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a document or instrument includes the document or instrumented as novated, altered, supplemented or replaced from time to time;
 - (v) a Party includes the Party's executors, administrators, successors and permitted assigns;
 - (vi) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - I. that Statutory Provision as amended or re-enacted from time to time; and
 - II. a statute, regulation or provision enacted in replacement of that Statutory Provision;
 - (vii) an amount of money is to an amount in Australian dollars (\$AUD);
 - (viii) time is to Australian Eastern Standard Time; and
 - (ix) a Schedule refers to a Schedule contained in this Agreement;
- (b) including and similar expressions are not words of limitation;
- (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (d) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
- (e) where a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day; and

- (f) a provision of this Terms of Sale must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision in it.

3. Operative part

3.1. Sale and purchase

The Customer has offered to purchase the items selected from Our Site at the time and has agreed that these terms and conditions apply to the Goods Ordered.

3.2. Placement of Orders

We may decline any Offer received from the Customer by providing written notice to the Customer within three (3) days of receipt of the Offer.

3.3. Acceptance of Offer

The Offer is accepted and becomes an Order when We accept the Offer as contained on Our Site at the time You agreed to be bound to these terms and conditions.

3.4. Delivery

We will deliver the Goods to the address supplied by You within the Anticipated Shipping Time. You consent to Us using the shipping company of Our choice to deliver the Goods to You.

3.5. Insurance

It is a condition of this Agreement that the We will insure the Goods Ordered.

3.6. Price

The Prices quoted by the Company and shown on Our Site when You agreed to these terms and conditions apply at the time the Offer is made by You and not at any other time.

3.7. GST

The Price is inclusive of GST.

4. Use of Account

4.1. Account and password

You agree to keep any passwords provided by Us to Our Site confidential. You are expressly prohibited from sharing Your Account details with third parties.

4.2. Termination of Account

- (a) We reserve the right to limit, cancel, suspend or terminate Your Account without notice to You and without providing a reason if We believe:
- (i) You are breaching any of the terms of this Agreement which cannot be remedied; or
 - (ii) Your use of the Account may be a breach of a third party's intellectual property rights.
- (b) You agree not to hold the Us liable for claims, demands or damages (including actual and consequential) of any kind for the closing of Your Account.

5. Risk and payment

5.1. Risk

Risk in the Goods passes to the Customer on delivery of that Order to the Customer or collection of that Order by the Customer's agent or courier as the case requires.

5.2. Payment

You agree to pay for the Goods using the credit card details You provide when making the Offer.

6. Disclaimer of warranties

- (a) You expressly acknowledge and agree that, to the maximum extent permitted by law subject to the Company's compliance with the obligations contained in the Australian Consumer Law its officers, employees, agents, expressly disclaim all warranties of any kind, whether express or implied, except the warranties that the Goods are provided with clear title, are of acceptable quality, are fit for the particular purpose for which they were supplied and that they comply with their description (**Non-Excludable Provisions**).
- (b) the Company makes no warranty that:
 - (i) the Goods will meet Your exact requirements;
 - (ii) the performance of the Goods will meet your expectations.
- (c) Customer warranties
The Customer warrants that:
 - (i) it has provided the Company with the correct address for delivery of the Goods.
 - (ii) the Goods have been obtained at the Customers own discretion and risk;
 - (iii) it will use the Goods strictly as required by any guidelines or recommendations provided by the Company;
 - (iv) it has made its own investigations into the suitability of the Goods and is not relying on any representation not expressly made by the Company;
 - (v) it will take out any policy of insurance as advised by the Company to protect against any foreseeable risk posed by use of the Goods; and
 - (vi) no advice or information, whether oral or written, obtained from the Company in relation to the Goods creates any warranty not expressly stated herein.

7. Limitation of liability

7.1. Limitation

Subject to any claims made because of a breach of a Non-Excludable Provision available under the Australian Consumer Law, the Company, its employees, officers and agents are not liable for any loss or damage, including, but not limited to, direct, Consequential Losses, or personal injury or death, however suffered or sustained in connection with:

- (a) any inaccurate or incorrect information provided about the Goods;
- (b) the Customer's use of the Goods;
- (c) any failure or delay including, but not limited to, the use or inability to use the Goods;

7.2. Agreed liability

- (a) Nothing in this Agreement attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law.
- (b) In Australia, Company's goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and 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 acceptable quality and the failure does not amount to a major failure.
- (c) For claims that cannot be excluded or restricted under Australian Consumer Law, the liability of the Company for such a claim will (at the Company's option and to the extent permitted by law) be limited to:

- (i) replacement of the Goods or the supply of equivalent Goods;
 - (ii) the cost of replacing the Goods or acquiring equivalent Goods;
 - (iii) repair of the Goods; and
 - (iv) the cost of having the Goods repaired; or
 - (v) the amount paid for the Goods, inclusive of GST, whichever is the greater.
- (d) Nothing in this Agreement attempts to limit or exclude liability of the Company in compliance with section 64 of Schedule 2 of the Australian Consumer Law.

8. Indemnity

- (a) The Customer indemnifies, and must keep indemnified, the Company and its employees officers and agents, against any action, liability, claim, loss, damage, proceeding, expense (including legal costs) suffered or incurred by the Company, arising from or in connection with, either directly or indirectly the Customer's breach of any of its obligations contained in this Terms of Sale, including but not limited to the making of a warranty that is inaccurate or incomplete.
- (b) The Customer indemnifies, defends and holds harmless the Company, its employees, officers, authorised representatives and agents (**Indemnified Parties**) against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including reasonable legal costs on a solicitor and own client basis) that the Indemnified Parties may incur or suffer as a direct or indirect result of:
- (i) Your breach of any provisions of this Agreement;
 - (ii) Your negligent acts or omissions;
 - (iii) Your actual or alleged breach of any law, legislation, regulation, by-law or code of conduct; or
 - (iv) any claims brought by or on behalf of a third party relating to any act or omission by You, including infringement of a third party's intellectual property rights.

9. General provisions

- (a) **Assignment** - Pro Facemask may assign any of its rights and obligations under this Agreement by notifying the other Party of such an assignment. The Customer may not assign its rights under this Agreement without the prior written consent of Pro Facemask, which may be granted or withheld in Pro Facemask's complete discretion and, if granted, may be subject to conditions.
- (b) **Entire agreement** - This document contains the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements and understandings except as otherwise provided herein.
- (c) **Further assurances** - Each Party must do anything (including execute any document) and must ensure that its personnel do anything (including execute any document), the other Party may reasonably require to give full effect to this Agreement.
- (d) **Governing law and jurisdiction** - This Agreement is governed by the laws of Queensland, Australia and each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

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- (e) **Notices** - A notice, approval, consent, or other communication in connection with this agreement must be in writing sent to the address of the receiving Party appearing in this Agreement or such other address as may be communicated by the receiving Party, marked for the attention of any person nominated for that purpose by the receiving Party (and who in the absence of any such nomination is the signatory to this agreement on behalf of the Party), and may be sent by prepaid post, courier, or electronic mail. A notice, approval, consent, or other communication is taken to have been received:
- (i) five (5) Business Days after sending if sent by domestic post (ten (10) Business Days if sent by international post);
 - (ii) if sent by courier, at the time indicated by the records of the courier;
 - (iii) if sent by electronic mail, upon receipt by the sender of an acknowledgment indicating that the mail item was received by the recipient or, in the absence of a receipt or notice of failed delivery, two (2) hours from the time of sending.
- (f) **Severance** - If anything in this Agreement is unenforceable, illegal, or void then it is severed, and the rest of this Agreement remains in full force and effect.
- (g) **Survival** - Any clause which is expressed to survive, or which by its nature is intended to survive termination of this Agreement, survives termination.
- (h) **Waiver** - A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing and signed by the Party giving it.
- (i) **Warranties regarding capacity** - Each Party represents to each other that, as at the date of this Agreement:
- (i) it has taken all necessary action to authorise its entry into and performance of this Agreement;
 - (ii) it has the power to enter into and perform its obligations under this Agreement;
 - (iii) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this Agreement; and
 - (iv) its obligations under this Agreement are valid and binding and enforceable against it in accordance with its terms.