



## OFFROAD LIVING RETAIL TERMS AND CONDITIONS OF SALE

**BY ORDERING GOODS FROM OUR ONLINE STORES YOU ARE AGREEING TO PURCHASE THOSE GOODS ON THE TERMS AND CONDITIONS SET OUT BELOW.**

### 1. General matters

- 1.1 These terms and conditions (**Terms**) govern all supplies of retail goods and associated services (**Goods**) by JKG Management and Investments Pty Ltd ACN 161 507 106 trading as Offroad Living (**we, us**) to you, our customer. We can be contacted at [contact@offroadliving.com.au](mailto:contact@offroadliving.com.au), Unit 2, 29 Prestige Parade, Wangara, 6065, Western Australia.

### 2. Orders

- 2.1 You may place an order on the Website or using the eBay Store if you are aged 18 years or over and have an active email account or a telephone number at which you can be contacted. Each Order you place will be a separate contract which is subject to these Terms.
- 2.2 Any order you place with us (whether via our Website, eBay Store or otherwise) is an offer by you to purchase the Goods and any associated services at the price displayed on our Website (or eBay Store). When we accept your offer an agreement is formed between you and us which incorporates these Terms and any order form you complete in respect of the purchase (**Agreement**). If there is any inconsistency between any order form on our Website (or eBay Store) and these Terms, these Terms will prevail.
- 2.3 Orders will be deemed received by us at the time we send an order confirmation to your nominated e-mail address. You must ensure that the correct email address and contact details are entered when you submit your order.
- 2.4 We may cancel your Order and refund any money paid, if:
- (a) we become aware after issuing our order confirmation that the Goods are out of stock;
  - (b) there has been a genuine pricing or description error in relation to the Goods;
  - (c) the transaction is suspected of being the subject of credit card or payment-related fraud; or
- we cannot contact you about your order using the contact details you provided, after having made reasonable attempts to do so.
- 2.5 Any order placed by you may not be cancelled or altered in whole or in part without our written consent.
- 2.6 You are responsible for completing an order and providing us with all necessary information.

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- 2.7 If we cannot process or complete your order, we will notify you and will not charge, or will refund without deduction, your payment for the order.
- 2.8 In the event that we consent to a cancellation or refund, you agree to our deducting a reasonable administrative fee for processing the cancellation or refund and any shipping costs in connection with the cancellation or refund.

**3. Product Availability**

- 3.1 From time to time, some Goods may be out of stock or are unavailable, in which case, we will refund you any money paid in respect of the relevant Goods.
- 3.2 We may withdraw or suspend from sale any Goods displayed on the Website or eBay Store, either temporarily or permanently, at any time and without notice. We will not be liable to you for any loss you or any third party suffer as a result of a withdrawal or suspension of sale of a particular Goods.
- 3.3 Where any Goods have been withdrawn or suspended from sale or are out of stock or unavailable and we are not able to fulfil all or part of your order, we will refund any money paid to us in accordance with clause 9.
- 3.4 If your order is affected by a genuine error (including in a description, an image or a price), we may cancel your order and refund any money paid to us in respect of the order.

**4. Prices and Promotions**

- 4.1 When you place an order, we will charge you and you agree to pay the price of the Goods and any applicable delivery fee at the time of checkout and prior to our confirming the order.
- 4.2 All prices are shown in Australian dollars and are inclusive of applicable goods and sales tax and other taxes of a similar nature (**GST**).
- 4.3 We reserve the right to change prices for Goods without notice to you. If you have already submitted an order at a particular price, we will supply your Goods at that price (unless your order is affected by a pricing error, in which case clause 3.4 will apply).
- 4.4 From time to time we may offer the use of promotional codes, the use of which is subject to the following:
  - (a) When you use a promotional code you warrant to us that you are the duly authorised recipient of the promotion and that you are using the promotional code in good faith.
  - (b) If we believe that a promotional code is being unlawfully or fraudulently used we may reject or cancel any transaction using the promotional code and you agree that you will have no claim against us in respect of any rejection or cancellation.
  - (c) Only one promotional code may be used for each transaction.

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- (d) Promotional codes remain our property at all times. The right to use a promotional code is personal to the original recipient and may not be transferred. No promotional code may be copied, reproduced, distributed or published directly or indirectly in any form or by any means, or stored in a data retrieval system, without our prior written permission.
- (e) Where the redemption of a promotional code is subject to a minimum spending requirement, the redemption is only permitted in respect of the purchase of qualifying Goods. Certain Goods and charges may be excluded from counting towards any minimum spending requirements, including supplementary charges, such as delivery or postage.
- (f) Where any offer states that a percentage discount will be given on a purchase, the cost of the qualifying purchases will be reduced by the stated discount percentage.
- (g) Charges such as delivery or postage and packing will not be discounted unless specifically stated in the offer description (such as a reference to “free shipping”).
- (h) We reserve the right to withdraw, vary or cancel a promotional code for any reason at any time without notice to you.
- (i) Refunds for Goods purchased under a promotional offer will be based on the promotional price paid. Your statutory rights will not be affected.

5. **Delivery of Goods**

- 5.1 We will use reasonable commercial efforts to arrange delivery of the Goods to the delivery address specified in your order. Prices for the Goods are exclusive of the delivery fee.
- 5.2 The cost of delivery of the Goods will be displayed on our Website or eBay Store. We use third party providers to handle delivery of Goods and do not accept any liability for any loss or damage of the Goods arising due to any action of those responsible for delivery of the Goods. Please contact us if you wish to take out insurance for the risk of damage or loss during delivery.
- 5.3 We will endeavour to deliver the Goods to you within the estimated time period specified on our Website (or eBay Store). Faster or tracked delivery may incur additional costs which are payable by you.
- 5.4 A signature on delivery may be required, in which case, you should ensure that there is a person present at the delivery address who is authorised by you to accept delivery. If you or your representative refuses to sign the delivery document, you will be taken as having refused to accept delivery.
- 5.5 If the Goods cannot be delivered to you and are returned to us or a third party freight company, you agree to pay our reasonable storage and administrative costs of arranging pick-up and/or further delivery of the Goods or we may cancel your order and refund the price paid by you for the Goods.
- 5.6 Risk in Goods supplied by us passes to you on the date and at the time of delivery of the Goods to our nominated third party delivery provider.

## 6. Images of Goods

- 6.1 All pictures and images of Goods displayed on our Website or eBay Store are for illustrative purposes only.
- 6.2 While we make all reasonable efforts to display the colours of Goods accurately, we cannot guarantee that the colours accurately reflect the colour of the Goods or that the Goods will match the photographs on our Website or eBay Store. Your Goods may vary in appearance from those images. The images of the Goods on the Website or eBay Store will not form any representation or any part of the Agreement.
- 6.3 Any accessory featured with any Goods is for illustrative purposes only and may be sold separately.
- 6.4 Where we provide dimensions and measurements in the description of any Goods, the dimensions may vary and you must ensure that the actual size of the Goods is suitable for your purpose prior to submitting your order.

## 7. Warranty for repair or replacement

- 7.1 In addition to any rights you have at law, we provide you with the following limited warranties:
- (a) a **30 day** limited warranty to repair or replace the Goods (at our option) subject to the following conditions:
- (1) the warranty will only apply if we receive notice of a claim by you during the period commencing on the day you receive delivery of the Goods (and such delivery will be deemed to have occurred on the earlier of any recorded delivery by any third party delivery service or the expected delivery period identified on our Website or eBay Store) and ending **30 days** later; and
  - (2) where the Goods are found to be defective and you notify us within the above period, we will cover the return shipping costs of the Goods to our nominated address and for the replacement or repaired Goods to be delivered to you.
- (b) An extended warranty to repair or replace the Goods (at our option) subject to the following conditions:
- (1) the warranty will only apply if we receive a notice of a claim by you during the period commencing on the date that is **30 days** after the date of delivery of the Goods to you (and such delivery will be deemed to have occurred on the earlier of any recorded delivery by any third party delivery service or the expected delivery period identified on our Website or eBay Store) and ending on the date that is **12 months** later; and
  - (2) you will be solely responsible for the delivery of the Goods to and from our nominated address.
- 7.2 Both of the warranties specified in clause 7.1 are subject to the following terms and conditions:

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- (a) the warranty covers defects in materials and workmanship only;
- (b) you may only claim under this warranty if all parts of the Goods are maintained in accordance with any recommendations, which we have conveyed to you, including via any instruction manuals maintained on our Website or supplied by the manufacturer;
- (c) you may only claim on this warranty if you have complied with all of the terms of the Agreement and any other reasonable requirements we request; and
- (d) you may not claim on this warranty to the extent any costs, loss or damage to the Goods arises as a result of or in connection with fair wear and tear of the Goods or your own negligence or act or omission.

7.3 if, during either period specified in clause 7.1 you notify us that Goods you have received are defective, then we will, at our option, either repair or replace the Goods at our cost.

7.4 No Goods will be accepted for return, repair or replacement under either warranty without our prior written consent.

8. **Terms of payment**

8.1 Payment for any orders is required at the time you place an order. Any payment for an order must clear before the Goods are dispatched. If your payment cannot be processed, your order will be rejected and we will notify you.

8.2 Payment may be made by MasterCard, Visa, American Express or by any other method agreed by us. The name on any credit card used for payment must match the name on the order.

8.3 If for any reason payment is not processed at the time of the order and your order is delivered, then you agree to pay us forthwith the amount of the order upon demand.

9. **Claims for Refunds and Returns**

Subject to clauses 6.3 and 8, any claim you wish to make as to an error in a description, specification or quantity of Goods delivered to you **must be notified to us in writing within 30 days** after delivery of the Goods. If you do not notify us within this period you will be deemed to have waived any right to a refund or return under this Agreement.

10. **Consumer Guarantees**

10.1 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. These guarantees are not limited by a defined timeframe.

10.2 If any Goods you purchase have a major failure, you may reject them and seek a refund, exchange or repair and compensation for any other reasonably foreseeable loss or damage or you may keep the Goods and seek compensation for any drop in value.

10.3 You are also entitled to have the Goods repaired or replaced if they fails to be of acceptable quality and the failure does not amount to a major failure. If the failure is

not a major failure, we may at our discretion, repair or replace the Goods or refund the price of the Goods to you within a reasonable time.

- 10.4 The Australian Consumer Law recognises that the relevant time period may vary by depending on the nature of the goods, the price paid and any representations made about the goods.
- 10.5 Where you believe any Goods are faulty or defective, it may be necessary for us to send your Goods to the manufacturer or their service agent for them to be assessed within a reasonable period of time.
- 10.6 Where any Goods are damaged through misuse, neglect or abnormal use, you will not be entitled to a refund, exchange or repair.
- 10.7 We require satisfactory proof of purchase of the relevant Goods before providing a remedy under the Australian Consumer Law.

## 11. Exclusions and Limitations

- 11.1 Our Goods are not sold for the purposes of resale or commercial use. The Goods are for domestic and/or personal use only.
- 11.2 The only conditions and warranties which are binding on us in respect of the Goods are those that are imposed by statute (including under the Australian Consumer Law) and those expressly set out in these Terms (for more information regarding your rights as a consumer, see [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)). All other conditions and warranties are expressly excluded.
- 11.3 To the maximum extent permissible by law and subject to any rights you may have under the Australian Consumer Law or any other applicable law:
  - (a) we will not be liable to you or any person claiming through you in contract or in tort for, or in respect of, any direct, indirect or consequential loss (including loss of expectations, loss of opportunity. Loss of goodwill, loss of profits or similar loss), damage, expense or injury suffered by you or any other person arising out of, or in connection with, or relating to the performance or non-performance or any breach of the Agreement or any other matter relating to the Agreement or any error in information supplied to you before or after the date of this Agreement in connection with its subject matter; and
  - (b) where the Goods supplied are not of a kind ordinarily acquired for personal, domestic and household use, our liability to you is limited to (at our option) refunding the price, replacing or repairing the relevant Goods and resupplying the associated services or paying the price for the services to be supplied again; and
  - (c) our liability to you for loss or damage of any kind arising out of these Terms will be reduced or limited to the extent (if any) that you cause or contribute to the loss or damage.

## 12. Refunds

12.1 We will process any refunds within a reasonable time of agreeing to do so. Refunds for purchases will be given using your original payment method and processed on the same card as the original payment was made.

12.2 Unless otherwise explicitly stated by us, delivery fees will not be refunded if you return Goods for change of mind or if you made an incorrect selection, including ordering the incorrect size or colour.

### 13. **Intellectual Property**

You acknowledge that we own (or license) the intellectual property in the Goods and any services we provide to you and nothing in this Agreement is, or is intended to, transfer ownership of any intellectual property rights of any kind to you.

### 14. **Privacy**

14.1 You agree that Personal Information provided in an order or when you contact us may be used and retained by us for the following purposes and for other purposes as may be required by law from time to time:

- (a) provision of Goods and marketing materials, offers and promotions in connection with Goods;
- (b) fulfilling and delivering your order;
- (c) processing any refunds in respect of Goods; and
- (d) processing of any payment instructions in relation to the Goods.

14.2 We reserve the right to conduct and implement fraud detection processes, including to validate your credit card details. If your nominated payment method triggers our fraud prevention protocols, we may contact you to confirm additional details, or rescind the transaction.

14.3 For more information regarding dealing with personal information, see our Privacy and Credit Reporting Policy at [www.offroadliving.com.au/pages/legal](http://www.offroadliving.com.au/pages/legal).

### 15. **Assignment and Subcontracting**

We may subcontract the performance of any of our rights and obligations under this Agreement and may assign our rights and obligations under this Agreement at any time without notice to you.

### 16. **Force Majeure**

We will not be liable for any loss or damage you suffer due to any delay or breach or default under this Agreement in circumstances where the delay, breach or default arises due to causes beyond our reasonable control.

### 17. **Variation**

17.1 We may vary these Terms and any page of the Website without notice. Changes to the Terms will be published on the Website and take effect immediately.

17.2 We will use all reasonable endeavours to keep the most up to date copy of these terms and conditions on our Website.

17.3 The Terms which apply at the time you place an order are those that govern that order. Each time you use the Website or eBay Store, you should ensure you have read and understand these Terms.

## 18. **General**

18.1 You acknowledge that we have not, and no person purporting to act on our behalf, has made any representation to you as to the fitness or quality of the Goods.

18.2 No failure by us to enforce any right arising under this Agreement will constitute a waiver by us of that right.

18.3 If any provision of this Agreement is determined to be void or unenforceable by any court, then such determination will not affect any other provision of this Agreement, which will remain in full force and effect.

18.4 Any notices required to be given to us under this Agreement must be provided in writing and sent by email to:

(a) [contact@offroadliving.com.au](mailto:contact@offroadliving.com.au) for general matters;

(b) [warranty@offroadliving.com.au](mailto:warranty@offroadliving.com.au) for warranty claims; and

(c) [repairs@offroadliving.com.au](mailto:repairs@offroadliving.com.au) for repair claims outside of the warranty period.

18.5 This Agreement is governed by the laws in force in the state of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that state.

## 19. **Interpretation**

In the Agreement (except where the context otherwise requires):

19.1 headings are for convenience and will not affect the interpretation of the Agreement;

19.2 references to legislation are to that legislation as amended, extended or re-enacted from time to time; and

19.3 references to "you" and "your" are to the person to whom the Goods are (or are to be) supplied.

## 20. **Definitions**

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

**eBay Store** means our online store operated at <http://www.ebay.com.au/>

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth);

**Website** means <http://www.offroadliving.com.au/>