

# Terms and Conditions

Welcome to the *Killcare Marina Internet Website*.

## **Interpretation**

Top 8 Pty Ltd trading as "Killcare Marina" should be referred to herein as "we", "us", or "our", and this reference includes (as applicable) our subsidiaries, affiliates, officers, directors, consultants, agents, employees, suppliers, content providers and advertisers.

"You" means you, the User of the *Website* and "Your" shall be interpreted accordingly.

## **General**

Access to and use of the *Website* and the products available through the *Web Shop* are subject to the following *Terms and Conditions*.

These *Terms and Conditions* are governed by the laws of New South Wales, Australia. In the event of a dispute you agree to submit to the exclusive jurisdiction of the courts of NSW and the Federal Court of Australia.

If any provision of these *Terms and Conditions* is held unenforceable, then such provision will be modified to reflect the parties' intention. All other provisions of the *Terms and Conditions* will not be affected and shall remain in full force and effect.

## **Acceptance**

You acknowledge and accept that your use of our *Website* indicates your acceptance of these *Terms and Conditions*. If you do not agree to these *Terms and Conditions*, please do not use the *Website*.

We reserve the right to vary these *Terms and Conditions* at any time. You accept that by publishing the varied *Terms and Conditions* on the *Website*, we have provided you with sufficient notice of the variation.

We suggest that you check these *Terms and Conditions*, periodically, for changes.

## **Disclaimer of Liability**

The material displayed on this *Website* is provided without any warranty or condition, express, implied or statutory.

To the maximum extent permitted by law we, hereby, expressly exclude all guarantees, conditions, warranties and other terms which might otherwise be implied.

We disclaim liability for any damages whatsoever including but without limitation to any direct, indirect, general, special, consequential, punitive or incidental damages, or damages for loss of use, loss of profit, loss of income, loss of business, bodily injury, emotional distress, or any loss or corruption of or damage to data; or damage to goodwill or reputation, or the cost of procurement of substitute goods and services, relating to your use of the *Website* or as the result of your dealings with third parties accessible through the *Website*, or your breach of these *Terms and Conditions*, however arising, irrespective of whether such damages were foreseeable.

Our liability in any circumstance is limited to the replacement of the goods; or payment of the cost of replacing the goods; repair of the goods; or payment of the cost of having the goods repaired.

## **Indemnity**

You agree to indemnify us from any and all third party claims, liability, damages and/or costs (including, but not limited to, legal fees) due to or arising from your use of this *Website* or your breach of these *Terms and Conditions*, or the documents it incorporates by reference, or your violation of any law or the rights of a third party.

## **No Warranty**

We do not give any representation and we specifically disclaim all warranties with regard to the information and applications contained on the *Website* and your use of the *Website*, including all implied warranties of title; merchantability; performance; fitness for a particular purpose and non-infringement; accuracy, reliability, completeness of the information, errors or omissions.

No advice or information (oral or written) obtained by you from us shall create any warranty.

We are in no way responsible for the content of any website that may be linked to our *Website* via hyperlink; whether the hyperlink is provided by us or by a third party.

We do not endorse and shall not be held responsible or liable for any content, advertising, products or services on or available from such website or material.

## **No Guarantee**

We do not guarantee continuous, uninterrupted access to the *Website* or availability of any third party website or material you access through the *Website*, and operation of the *Website* may be interfered with by numerous factors outside our control.

We take precautions to detect viruses and other harmful codes, which may be introduced into the *Website* or related material. However, you are responsible for using your own procedures for detecting these and for protecting your systems against them.

We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of this *Website* or to your downloading of any material posted on it, or on any website inked to it.

We take reasonable steps to preserve the security of your information. Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. Accordingly, although we strive to protect such information, we cannot guarantee the security of any information you transmit to us or from us and you do so at your own risk.

## **Intellectual Property**

All copyright, trade marks and all other intellectual property rights in all material or content supplied as part of the *Website* shall remain at all times vested in us.

You may use any content which appears on this *Website* for your personal and non-commercial purposes.

You will not, and you will not assist or facilitate any third party to copy, publish, transmit, broadcast, circulate, distribute, manipulate, create derivative works, or otherwise reproduce, in any format, any of the content which appears on this *Website*, for commercial purposes or in connection with any business or commercial enterprise, unless expressly authorised in writing by us.

The delivery of a media product purchased by you through the *Web Shop* expressly authorises you to use the product for commercial purposes. We do not reserve any rights, but would appreciate a reference.

## **Acceptable Use**

Certain parts of this *Website* may be protected by passwords or require a login.

You must provide us with current, complete, and accurate information as prompted by the registration process and agree to regularly update this information to maintain its completeness and accuracy.

You are responsible for maintaining the confidentiality of any account information, user names, logins, passwords, and security questions and answers that you use to access any page or feature on this *Website*. You are responsible for logging off from your account and any protected areas of the *Website*.

Further, you are fully responsible for all activities occurring under your accounts, user names, logins, passwords, and security questions and answers including that may result from your negligence, carelessness, misconduct, or failure to use or maintain appropriate security measures.

If you become aware of any suspicious or unauthorised conduct concerning your accounts, user names, logins, passwords, or security questions and answers, you should contact us immediately. We will not be liable for any loss or damage arising from your failure to comply with this condition of use.

You must not misuse this *Website*.

You will not commit or encourage a criminal offence; obtain or attempt to obtain unauthorised access to any part or feature of this *Website* through any means not intentionally made available to you by us; transmit or distribute a virus, trojan, worm, logic bomb or any other material which is malicious, technologically harmful, in breach of confidence or in any way offensive or obscene; corrupt data; cause annoyance to other users; infringe upon the rights of any other person's proprietary rights; send any unsolicited advertising or promotional material (commonly referred to as "spam"); or do anything that affects the performance or functionality of any computer facilities of or accessed through this *Website* or causes unreasonable inconvenience, offence or disruption to our staff.

Breaching this provision would constitute a criminal offence and we will report any such breach to the relevant law enforcement authorities and disclose your identity to them.

## **Privacy**

When you create an account or place an order through the *Web Shop*, you will be providing us with your personal information. We will use your personal information to process your order and for the delivery of the products ordered and for other limited purposes.

Our collection and use of your personal information will be carried out subject to the terms of our *Privacy Policy*.

We expressly reserve the right to monitor use of this *Website*.

## **Product Availability**

We will endeavour to supply all items publicised on the *Web Shop*. Similarly, products will be removed from the *Web Shop* as soon as we become aware that those items are unavailable. However, there may be unavoidable occasions when:

- All or part of your order cannot be fulfilled immediately; or
- All or part of your order cannot be fulfilled at all.

Where part of an order cannot be fulfilled immediately, the part that can be supplied will be dispatched as soon as possible. Where part of your order cannot be fulfilled at all you will be advised as soon as possible.

All products with a limited sales period which are displayed in the *Web Shop* will have the withdrawal date clearly shown. However, where a product which does not have a specified sales period becomes unavailable due to unexpected demand, and that item is ordered by you before we have withdrawn that item from the *Web Shop*, we will not be held responsible for inability to complete that order.

## **Variation**

The information contained in this *Website* is given by us in good faith and is believed to be accurate as at the time of compilation. However, changes in circumstances, including the unlawful interference and unauthorised tampering, after the date of publication may impact on the accuracy of the information.

We reserve the right in our absolute discretion at any time and without notice to make any necessary corrections.

Care has been taken to ensure that the products and descriptions of them on the *Web Shop* are accurate.

However, we reserve the right in our absolute discretion at any time and without notice to modify or terminate any product or service for any reason, to make changes to prices, descriptions or the availability of products.

We will not, however, make any changes to the price, availability or description of any product after an order has been accepted.

You should enquire with us directly to ensure the accuracy and currency of the material you seek to rely upon.

## **Order & Acceptance**

In order to contract with us through the *Web Shop* you must be over 18 years of age.

You will be required to confirm that you have read and accept these *Terms and Conditions* before you submit an order. Your placement of an order shows your acceptance of these *Terms and Conditions*.

When placing an order you undertake that all details you provide to us are true and accurate, that you are an authorised user of the payment method used to place your order and that there are sufficient funds to cover the cost of the products.

All orders are subject to availability, confirmation of the order price and to our acceptance and may be refused at our discretion, for example in cases where:

- Orders cannot be processed due to an error in information you have provided;
- There is an error on the *Web Shop* relating to the products that you have ordered, for example an error relating to the price or description of the product as displayed on the *Web Shop*; or
- The products that you have ordered are no longer available through the *Web Shop*.

Each order submitted constitutes an offer to purchase products. When you place an order, you will receive an acknowledgement e-mail confirming receipt of your order: this email will only be an acknowledgement and will not constitute acceptance of your order.

A contract between us will not be formed until you receive an email that your order has been dispatched confirming that your order has been accepted.

## **Prices & Payment**

The product price is always the price indicated. All prices are inclusive of Australian Goods and Services Tax (GST) where applicable. We will issue a compliant tax invoice where appropriate.

The available payment methods are displayed in connection with the product order in the *Web Shop*. Online payment method is provided by PayPal. Please, note that payments may take a few days to process.

Products and their postage are paid in conjunction with the order, where applicable; such additional charges are clearly displayed.

Whilst we try and ensure that all details, descriptions and prices which appear on the *Web Shop* are accurate, errors may occur. If we discover an error in the price of any product which you have ordered we will inform you of this as soon as possible and give you the option of reconfirming your order at the correct price or cancelling it. If we are unable to contact you we will treat the order as cancelled. If you cancel and you have already paid for the goods, you will receive a full refund.

## **Delivery**

Acceptance of your order implies that we will fulfil your order. The following situations are exceptions:

- If and when incorrect payment details are supplied;
- Where correct details are supplied but funds are not approved;
- Where fraudulent activity is suspected / identified;
- Where cleared funds through your nominated payment method have not been received.

In the event that you supply incorrect payment and delivery details, we will take all reasonable steps to contact you using the personal details that you have provided. In the event that your supplied contact details are incorrect, however, we will not be held responsible for not fulfilling your order, nor for being unable to advise you that this is the case.

Your product(s) will only be shipped after receipt of payment.

Product that is delivered to you will become your property at the time that you receive it provided that we have received full payment for the product. As soon as we have delivered the product to you, you will become responsible for it and for any loss or damage to it thereafter.

### **Media Products Delivery**

Shipping method for media products is download and the dispatch time will only depend on receipt of payment.

### **Physical Products Delivery**

Dispatch times may vary according to availability and subject to any delays resulting from postal delays or force majeure for which we will not be responsible.

Any delivery dates provided to you in connection with your order are estimates. Although the aim is to provide you with as accurate estimates as possible, we cannot promise that they are accurate.

Shipping and handling charges will depend on the value of your order and the country to which the product is being shipped. Any customs duties or tariffs that may be imposed on the deliveries will be paid by you.

We reserve the right to deliver the ordered products in separate shipments.

## **Returns / Refunds - Media Products**

We do not offer an exchange or return for a refund for media products.

## **Returns / Refunds - Faulty Physical Products**

All products sold by us must be: fit for all the purposes for which goods of that kind are commonly supplied; acceptable in appearance and finish; free from defects; and safe.

You can return a product to us if: it's faulty; it's incorrectly described; it doesn't do what we said it would do; or it's not of an acceptable quality.

If the product is unsafe, can't be fixed within a reasonable time, or you simply would not have bought it given the nature of the defect, we will offer you an exchange, repair or refund.

If you wish to exchange or return for a refund a product that is sold to you by us which is faulty or otherwise damaged when you receive it, which does not correspond to the description on the *Web Shop*, or which develops a fault after you receive it, you can do so in accordance with and pursuant to applicable law and as separately informed by us.

To ask for an exchange, repair or refund, you'll need to:

- Contact us within 7 days of receipt of the product;
- Prove that you purchased the product via the *Web Shop*. If you can't provide an order confirmation, another form of proof will be required.

The item should be in the same condition, without any changes, marks and signs of use or wear.

Refunds will be issued using the same method as your original payment. Return shipping is to be paid by you unless separately advised by us otherwise.

This provision does not set-aside your mandatory legal rights in this respect.

## **Returns / Refunds - Non-faulty Physical Products / Change of Mind**

You can make changes to or cancel your order at any time before your order has been processed.

To make changes to your processed order, please contact us.

If your order has already been dispatched, we do not offer change of mind returns and refunds.