



IDEALSEAT PTY LTD
TERMS AND CONDITIONS OF TRADING

1. DEFINITIONS

- 1.1 "IDEALSEAT" means Idealseat Pty Ltd 110 494 838 of 10 Bignell Road, Moorabbin Vic 3189 Victoria.
- 1.2 The "Customer" means the party placing an order for the purchase of goods from IDEALSEAT.
- 1.3 "Order" or a "request" refers to an order for goods.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 These terms and conditions apply to every dealing between IDEALSEAT and the Customer, and the Customer agrees to adhere to these Terms and Conditions and that they prevail over any other conditions whether verbal, implied or written to the extent permitted by law.
- 2.2 These Terms and Conditions may be changed by IDEALSEAT from time to time and the then current version of the Terms and Conditions shall be binding upon the Customer.

3. ORDERS

- 3.1 Orders are subject to acceptance by IDEALSEAT in whole or in part at:

Ideal Seat Pty Ltd
10 Bignell Road
MOORABBIN, Victoria, 3189
Australia

- 3.2 The Customer must place a written order setting out full details of all of their requirements. IDEALSEAT will not be responsible for any mistakes that may be attributed to the lack of written details. The Customer will be required to pay for such goods ordered by mistake.

- 3.3 IDEALSEAT reserves the right to impose minimum order requirements which may be changed by IDEALSEAT from time to time.
- 3.4 No order may be cancelled except with consent in writing from IDEALSEAT.
- 3.5 In the event the Customer purports to cancel any order or request, such attempt may at IDEALSEAT's election be treated as a repudiation of the contract between the parties and the Customer shall pay to IDEALSEAT all losses, damages, costs, interest fees, charges including handling charges payable to both IDEALSEAT and its suppliers (if any) and the expenses incurred or suffered by IDEALSEAT as a result of the repudiation of the contract.
- 3.6 Orders shall not be varied unless the variation is in writing, signed by IDEALSEAT. Any request for a variation shall be posted by prepaid post to Customer Service at:

Idealseat Pty Ltd
10 Bignell Road
MOORABBIN, Victoria, 3189
Australia.

IDEALSEAT's acceptance of the variation shall be posted by prepaid postage to the address of the Customer to which IDEALSEAT renders accounts or sent by facsimile.

- 3.7 IDEALSEAT or the manufacturer of the goods ("the Manufacturer") may, without notice, change the range of goods and services or redesign or modify existing goods or services resulting in some goods or spare parts becoming obsolete or unavailable and IDEALSEAT or the Manufacturer shall not be liable for any loss or damage suffered by the Customer or the Customer's customers as

a result. The Customer undertakes to advise any person or company to whom it sells any goods of this condition.

4. ACCEPTANCE OF ORDERS

4.1 Orders will be deemed to have been accepted by the IDEALSEAT at the earlier of:

4.1.1 receipt of payment for the goods by IDEALSEAT; or

4.1.2 dispatch of the goods from IDEALSEAT; or

4.1.3 notice by IDEALSEAT in writing.

5. PAYMENT

5.1 Payments by the Dealer for these Products must be made to IDEALSEAT by electronic transfer to IDEALSEAT into the account nominated and advised by IDEALSEAT or by bank cheque prior to delivery or by way of other terms of payment as required by IDEALSEAT from time to time.

5.2 Payment for goods must be received by telegraphic transfer by IDEALSEAT prior to dispatch of the goods by IDEALSEAT unless other payment arrangements have been mutually agreed upon.

5.3 IDEALSEAT shall not be obliged to deliver goods or perform services until all monies owing and overdue to IDEALSEAT by the Customer for prior orders are paid to IDEALSEAT.

6. PRICES AND RESALE PRICES

6.1 IDEALSEAT price lists do not constitute an offer.

6.2 Quotations are given and orders are accepted only on the basis that the prices charged will be those applicable at the date of dispatch, ex IDEALSEAT warehouse.

6.3 Prices shall be exclusive of any delivery and transit cost that might be incurred in delivering the goods to the Customer's premises.

6.4 All prices are subject to change without notice.

6.5 Recommended and suggested resale or retail prices wherever shown are recommended resale or retail prices only and there is no obligation to comply with any recommendation or suggestion.

6.6 The Customer shall in addition to any monies otherwise payable hereunder pay any applicable

goods and services taxes (or its equivalent) in respect of any goods and/or services purchased.

7. MODIFICATIONS

7.1 If any modifications to the goods are required to comply with the regulations or laws of the State or Country in which the Customer is located and/or in which the goods are to be resold or used by the Customer, each order must include clear instructions detailing the required modifications.

7.2 The Customer must not modify the goods in any way, other than with the written consent of IDEALSEAT and in strict compliance with instructions supplied by IDEALSEAT.

7.3 IDEALSEAT shall not be liable for any loss or damage suffered by the Customer or any third party of or incidental to:

7.3.1 modifications that do not comply with regulations standards or laws to which the goods and/or the Customer are subject, if the instructions or information supplied by the Customer are incorrect, incomplete or in any way ambiguous;

7.3.2 modifications that were not authorized by IDEALSEAT or were not completed strictly in accordance with IDEALSEAT's instructions.

8. SHIPMENT

8.1 Representations by IDEALSEAT as to date and/or time for delivery are not guaranteed. All representations are made in good faith, in the light of conditions and circumstances that are known to IDEALSEAT at the time.

8.2 IDEALSEAT and its directors, officers, employees and associated companies shall not be liable for late deliveries or non-deliveries and under no circumstances shall IDEALSEAT be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery of goods or service, whether such loss or damage is due to negligence or wilful act, misconduct or default of IDEALSEAT or any third party and whether or not if the same occurs in the course of the performance by IDEALSEAT of any contract or in circumstances which are foreseeable by IDEALSEAT or in circumstances which would constitute a fundamental breach of any contract or a breach of any fundamental term hereof.

- 8.3 Goods will normally be shipped by the most convenient and economical method and route having regard to the nature of the goods. IDEALSEAT reserves the right to charge the Customer for delivery.
- 8.4 If IDEALSEAT was unable to deliver part of an order for any reason whatsoever, IDEALSEAT may deliver by installments. Each installment shall be regarded as a separate contract and any defect in, or failure to deliver an installment shall not give the Customer the right to cancel the balance of deliveries due under the order.
- 8.5 The Customer will upon receipt, inspect the goods and notify IDEALSEAT of any errors or shortages within seven days after delivery, quoting delivery docket numbers and all other relevant details.
- 9. DAMAGE OR LOSS IN TRANSIT**
- 9.1 It shall be the responsibility of the Customer to insure the goods. IDEALSEAT may suggest or offer group insurance but it is the Customer's responsibility to ensure that the insurance is adequate for the purpose. IDEALSEAT shall not be liable for any loss or damage suffered during transit.
- 10. TITLE AND RISK**
- 10.1 IDEALSEAT reserves the following rights in relation to the goods until all amounts owed by the Customer to IDEALSEAT are fully paid:
- 10.1.1 legal ownership of goods;
- 10.1.2 to enter the Customer premises (or the premises of any third party where the goods are located) using reasonable force, to repossess the goods without the Customer being able to make a claim for trespass. The Customer indemnifies IDEALSEAT for any loss or damage suffered by IDEALSEAT of or incidental to entry onto a third party's premises. All costs of repossession of goods by IDEALSEAT will be payable by the Customer, and
- 10.1.3 to keep or resell any goods repossessed pursuant to clause 10.1.2 above.
- 10.2 Until the legal ownership of the goods has passed to the Customer, the Customer shall be bailee of goods in its possession but title for such goods remains with IDEALSEAT.
- 10.3 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 in a separate identifiable account as the beneficial property of IDEALSEAT and shall pay such amounts to IDEALSEAT upon request.
- 10.4 Notwithstanding the provisions above, IDEALSEAT shall be entitled to maintain an action against the Customer for the whole purchase price and any other loss suffered or incurred by IDEALSEAT.
- 10.5 The Customer shall have no claim against IDEALSEAT for any damages or other monies whatsoever if IDEALSEAT repossesses or attempts to repossess the goods. The rights of IDEALSEAT hereunder are in addition to any other claim or rights IDEALSEAT has under any other term hereof or under any other contract between the parties.
- 10.6 Risk in the goods supplied by IDEALSEAT shall pass to the Customer immediately on dispatch by IDEALSEAT and the Customer shall keep the goods insured, safe and readily identifiable.
- 11. DEFAULT**
- 11.1 In the event the Customer is in default of any term or condition and such default has continued for a period of seven days, IDEALSEAT may, at its election at any time thereafter shall be at liberty to cancel any or all orders yet to be completed and to recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to IDEALSEAT and its suppliers) and all expenses incurred and suffered by IDEALSEAT as a result of the Customer's default and the subsequent cancellation.
- 11.2 The Customer shall have no recourse whatsoever against IDEALSEAT for any loss or damaged suffered as a result of any such cancellation.
- 11.3 In the event that any monies are due and payable by the Customer to IDEALSEAT, but remain unpaid for seven days, IDEALSEAT may charge the Customer and be paid interest on the outstanding balance from the due date until payment is received by IDEALSEAT at a rate of 1.5% per calendar month or part thereof.

12. DEFECTS

- 12.1 Any claim by the Customer relating to any defect in manufacture of goods, or any shortage or other nonconformity to an order for goods shall be made in writing to IDEALSEAT at its address:

**Ideal Seat Pty Ltd
10 Bignell Road
MOORABBIN, Victoria, 3189
Australia**

within 7 days of delivery of the goods.

- 12.2 Unless such written claim is received by IDEALSEAT within the specified period, the Customer shall be deemed to have accepted the condition of the goods, conformity of the goods to the order.

- 12.3 Any claim in relation to a defect in goods must be accompanied by both:

12.3.1 a specimen of the article showing the alleged defect; and

12.3.2 a sample taken from the consignment in its original packaging showing the references used for identification purposes.

- 12.4 Notwithstanding that a claim has been made by the Customer, the Customer shall pay for the goods and/or services pending determination of the claim by IDEALSEAT.

13. RETURNS

- 13.1 No goods shall be returned to IDEALSEAT by the Customer without the written consent of IDEALSEAT.

- 13.2 If IDEALSEAT consents to the return of goods, IDEALSEAT shall not be required to accept such goods by way of return unless:

13.2.1 The delivery charge for the return to IDEALSEAT of the goods is first paid by the Customer;

13.2.2 The goods are unused and undamaged and in their original packaging; and

13.2.3 The goods and the packaging are as new and in a saleable condition with only their

original marks, numbers unaltered and prices not marked thereon.

14. LIMITATION OF LIABILITY

- 14.1 Subject to any express written warranty otherwise given by IDEALSEAT, and subject to any statutory warranties express or implied which by law cannot be excluded, all warranties conditions and representations whether express or implied are expressly negated. Where a warranty or condition is implied by law, IDEALSEAT's liability to the extent that same can be so limited, is limited to one of the following at IDEALSEAT's discretion in the case of goods:

14.1.1 Replacement of goods or supply of equivalent goods;

14.1.2 Repair of goods;

14.1.3 Payment of costs of replacing the goods or acquiring equivalent goods; or

14.1.4 Payment of the cost of having the goods repaired.

- 14.2 IDEALSEAT and its directors, officers, employees and associated companies, shall have no liability (including liability in negligence) to any person for any loss or damage, consequential or otherwise, howsoever suffered or incurred by any such person of and incidental to the goods sold by IDEALSEAT to the Customer, and without limiting the generality thereof, any loss or damage consequential or otherwise suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind incidental to the goods or associated with delayed and non-delivery and whether or not if the same occurs in the course of the performance by IDEALSEAT of any contract or in circumstances which are foreseeable by IDEALSEAT or in circumstances which would constitute a fundamental breach of any contract or a breach of any fundamental term hereof.

- 14.3 The Customer hereby indemnifies and keeps indemnified IDEALSEAT and its directors, officers, employees and associated companies (to the extent permissible by law) in respect of any loss or damage consequential or otherwise howsoever suffered or incurred by any person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or or kind incidental to the goods or associated with delayed and non-

delivery and whether or not if the same occurs in the course of the performance by IDEALSEAT of any contract or in circumstances which are foreseeable by IDEALSEAT or in circumstances which would constitute a fundamental breach of any contract or a breach of any fundamental term hereof.

15. CUSTOMER'S DETAILS

15.1 The Customer shall forthwith give notice to IDEALSEAT of the change of address, telephone number, facsimile numbers or address for delivery to the Customer not later than 7 days prior to such change occurring.

15.2 The Customer shall inform IDEALSEAT of any changes in the ownership of the Customer within 14 days of such change, whether total or partial by forwarding to IDEALSEAT notice in writing of that change by prepaid security post or its equivalent, direct to Customer Service at:

**Ideal Seat Pty Ltd
10 Bignell Road
MOORABBIN, Victoria, 3189
Australia.**

15.3 Until such notice is received by IDEALSEAT the Customer and if it is a company or trustee, each of the Directors thereof shall hold IDEALSEAT indemnified, against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses of whatsoever nature incurred or suffered by IDEALSEAT in trading with any person, company (including the same company but with a different shareholder or shareholders) or other entity (including a trust) which may have purchased the Customer's business or any interest therein or any of the shares in the Customer and used the Customer's previously approved credit account for trading.

16. NOTICES

16.1 Any notice, demand or other communication given or made under these terms and conditions must be in writing:

16.1.1 if given or made by IDEALSEAT, signed by an authorised officer,

16.1.2 if given or made by the Customer, signed by the Customer or an authorised officer, and

16.1.3 delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender,

16.2 Such notices will be taken to have been given or made:

16.2.1 in the case of delivery by post, three days after the date of posting;

16.2.2 in the case of delivery by hand, when delivered, and

16.2.3 in the case of delivery by fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

16.3 Any notice, demand or other communication may also be given or made in accordance with any method, procedure or requirement permitted under any applicable law.

17. MISCELLANEOUS

17.1 This Agreement shall be governed by and interpreted in accordance with the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction and any appeal courts from them.

17.2 The Customer and guarantors declare that the goods to be provided by IDEALSEAT are to be used wholly or predominantly for business or investment purposes (or for both purposes).

17.3 The Customer acknowledges and agrees that IDEALSEAT may assign all of its rights, benefits and interests under this Agreement to any other entity as nominated by IDEALSEAT. Any such assignment by IDEALSEAT shall not prejudice or affect the rights, claims or interests of the Customer or IDEALSEAT which have accrued up to the date of assignment.

17.4 The Customer shall not assign, transfer or novate its rights and obligations under this Agreement, without the prior written consent of IDEALSEAT, in IDEALSEAT's absolute discretion.

17.5 If any provision of these terms and conditions is, for any reason, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other

competent authority, that provision shall be severed in the relevant jurisdiction and all other provisions of the terms and conditions shall continue in full force and effect.

- 17.6 No failure to exercise, nor any delay in exercising, any right, power or remedy by IDEALSEAT operates as a waiver. A single or partial exercise by IDEALSEAT of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on IDEALSEAT unless in writing. IDEALSEAT's rights, powers and remedies under these Terms and Conditions are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any other agreement or instrument.
- 17.7 The Customer consents to the use of any Personal Information of its employees, officers or agents, for the purposes set out in IDEALSEAT's Privacy Policy including but not limited to the Customer's or its director's credit history.
- 17.8 IDEALSEAT shall not under any circumstances be responsible to the Customer for any failure to comply with its obligations under this Agreement pursuant to any order that is accepted, which failure is caused by an act of God, acts of any Government, war or other hostility, national or international disaster, the elements, fire, explosion, power failure, equipment failure, strikes or lockout, inability to obtain necessary supplies and the like and other force majeure occurrences.