

# WALLBEDS AUSTRALIA – TERMS AND CONDITIONS OF SALE

## 1 DEFINITIONS

1.1 In these Terms, the following definitions apply:

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth), Schedule 2.

**Business Day** is when banks are open for business, excluding a Saturday, Sunday, or public holiday in New South Wales.

**Claim** includes any claim, action, demand or proceeding.

- (a) under, arising out of, or in any way in connection with these Terms;
- (b) arising out of, or in any way in connection with the Goods or either party's conduct before the date of the Order; or
- (c) arising otherwise at law, including in equity, by statute, tort (whether for negligence or otherwise), contract, for restitution or unjust enrichment.

**Consumer** has the meaning given to it in the Australian Consumer Law.

**Deposit** means 50% of the Price, payable by clause 3.1.

**Force Majeure Event** means any event beyond the relevant party's reasonable control.

**Goods** means the cabinetry and mechanisms goods You order from Us.

**GST** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any other similar tax.

**Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, know-how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**Law** means any act, ordinance, order, rule, regulation, by-law, code (including building laws and work health and safety law), or other legislative or subordinate legislative instruments, and includes any manual, standard, industrial agreement, scheme, undertaking, code, or award, and includes any replacement or amendment of any of those from time to time.

**Lay-By Deposit** means 30% of the Price, payable by clause 4.2(a).

**Liability** means all liabilities, costs, damages, losses, expenses, and outgoings of whatever description, including the fees and costs of defending or settling any Claim.

**Order** means the order placed by You with Us for the supply of the Goods.

**Prescribed Terms** means any terms, conditions, and warranties which the law expressly provides may not in respect of these Terms be excluded, restricted, or modified, or may be excluded, restricted, or modified only to a limited extent.

**Price** means the price payable for the Goods as set out in the Quote.

**Quote** means Our quote for the Order of the Goods, which includes the Price.

**Terms** means the agreement formed between You and Us for the Order of the Goods and includes the Quote.

**Us, We, Our** means McLeod Enterprises Pty Ltd ACN 104 969 271 and includes its directors, agents, subcontractors and employees.

**You, Your** means the person/entity purchasing the Goods and includes its directors, agents, subcontractors, and employees, where applicable.

1.2 Unless the context requires otherwise:

- (a) a reference to a person includes a corporation, a trust or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of these Terms or otherwise affect the interpretation of these Terms;
- (d) where any word or phrase is given a definite meaning in these Terms, any part of speech or another grammatical form of that word or phrase has a corresponding meaning;
- (e) the term "includes" (or any similar term) means "includes without limitation"; and
- (f) a reference to any statute includes references to any subsequently amended, consolidated, or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

## **2 ORDERS**

2.1 These Terms and the Quote apply to all Orders placed by You with Us.

2.2 Once an Order is placed and the Deposit is paid, it cannot be cancelled except in accordance with these Terms. We will not be liable for a refund to You except as expressly provided in these Terms.

2.3 We must prepare and deliver the Order for Goods to You in accordance with the Quote.

2.4 You must provide assistance and give us all relevant information as reasonably required by Us to fulfil the Order.

2.5 Dates quoted for delivery of goods are approximate only at the time of ordering and may vary due to circumstances beyond our control. You will be advised as soon as your goods are ready for delivery.

## **3 PAYMENT**

3.1 You must pay the Deposit to Us at the time of the Order. We will begin preparation of the Order on payment of the Deposit.

3.2 You must pay the balance of the Price when requested by Us, which will be when the Goods are complete and ready for dispatch to you. We will advise You when the Goods are ready to be dispatched.

- 3.3 If You have given Us Your credit card details, you authorise Us to charge your credit card to effect the price payment, including the Deposit.
- 3.4 You must pay all GST payable by Us concerning the supply of the Goods and any other applicable taxes or charges. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with these Terms are exclusive of GST.
- 3.5 We will not dispatch the Goods until we have received all monies payable by You in connection with the supply of the Goods.
- 3.6 If You cancel an Order after You have paid the Deposit and prior to Us advising, You when the Goods are ready to be dispatched:
- (a) You must pay a cancellation fee to Us on cancellation (**Cancellation Fee**);
  - (b) the Cancellation Fee will be the greater of:
    - (i) Our reasonable costs relating to the Order, including costs for preparing the Order, administration charges and storage costs; and
    - (ii) 20% of the Price;
  - (c) We must refund the portion of the Price paid up to the date of cancellation, less the Cancellation Fee; and
  - (d) if the Deposit is less than the Cancellation Fee, You must pay Us the remainder of the Cancellation Fee.

#### **4 LAY-BY**

- 4.1 This clause 4 applies if You have requested to purchase the Goods on lay-by. If You are purchasing the Goods on lay-by, then clauses 3.1 and 3.2 do not apply, and this clause 4 applies regarding payment for the Goods.
- 4.2 If You are purchasing the Goods on lay-by, then:
- (a) You must pay the Lay-By Deposit to Us at the time of the Order;
  - (b) You must pay the remainder of the Price in equal fortnightly instalments over the lay-by term, which is for a maximum of three months from the date of the Order;
  - (c) We will begin preparation of the Order on payment of the instalment due four weeks before the final date of the agreed lay-by term or four weeks before the final date of the agreed lay-by term, whichever is the latter; and
  - (d) We will only dispatch the Goods once we have received all monies payable by You in connection with the supply of the Goods.
- 4.3 You may terminate these Terms and the lay-by arrangement for the Goods at any time before the dispatch of the Goods to you.
- 4.4 If you terminate these Terms and the lay-by arrangement in accordance with clause 4.3 and We have not breached these Terms, then:
- (a) You must pay a termination fee to Us on termination (**Termination Fee**);

- (b) the Termination Fee will be equal to Our reasonable costs relating to the Order, including costs for preparing the Order, administration charges and storage costs;
  - (c) We must refund the portion of the Price paid up to the date of termination, less the Termination Fee; and
  - (d) if the portion of the Price paid is less than the Termination Fee, You must pay Us the remainder of the Termination Fee.
- 4.5 We may terminate these Terms and the lay-by arrangement where you have breached these Terms. If we terminate these Terms and the lay-by arrangement, we must refund the portion of the Price paid up to the date of termination.

## **5 ACKNOWLEDGEMENTS**

- 5.1 You acknowledge and agree that:
- (a) Goods are designed to be operated by adults, and use by children may result in injuries or damage to the Goods;
  - (b) Our warranties do not cover injuries or damage for incorrect use;
  - (c) You will use the Goods safely and in accordance with proper usage procedures and instructions; and
  - (d) You will inform anyone using the Goods of the mechanism's operation.

## **6 DELIVERY**

- 6.1 Any delivery times and dates advised by Us to You are an estimate only and may vary due to circumstances beyond Our control.
- 6.2 We will use Our reasonable endeavours to meet the delivery times and delivery dates specified on an Order. Still, we will not be responsible for any loss or damages incurred by You or any other person or entity because of early or late delivery of the Goods.
- 6.3 You must pay a further re-delivery fee for the second delivery. Our carriers agree to deliver to the customer's address only. It is at the customer's expense if goods do not fit into the property or cranes are required to achieve access. Sales staff must be advised at the time of sale/booking delivery if access problems are anticipated.
- 6.4 You will be responsible for checking that the Goods comply with Your requirements, and You must notify Us of any discrepancy, damage, or missing items. If no discrepancy, damage, or missing items are recorded and notified to Us within 24 hours of delivery, the Goods will be deemed to have been supplied in accordance with the Order and accepted by You.
- 6.5 Title to the ordered Goods will transfer to you upon the payment in full for the Goods and dispatch of the Goods to you.
- 6.6 Risk in the Goods will pass to You upon delivery.

## **7 STORAGE OF COMPLETED ORDERS**

- 7.1 We will advise You when the Goods have been prepared and are ready to be dispatched.
- 7.2 We may hold completed Goods in our storage for up to five Business Days after advising You that the Goods are ready to be dispatched in accordance with clause 7.1 at no cost to You.
- 7.3 If We are required to store Goods for more than five Business Days after advising You that the Goods are ready to be dispatched, You must pay Us a storage fee of \$20 per day (**Storage Fee**).
- 7.4 The Storage Fee's total amount must be paid before the dispatch of the Goods. We will not dispatch the Goods until the total amount of the Storage Fee has been paid in full.

## **8 LIABILITY**

- 8.1 To the full extent permitted by law, we exclude all liability in respect of your use of the Goods, interruption of business, wasted management time or any consequential or incidental damages, even if You had advised us or should have reasonably been aware of the possibility of such loss.
- 8.2 Party's Liability for any Claim relating to these Terms will be reduced to the extent to which the other party contributed to the Liability arising from the Claim.

## **9 WARRANTY & PRESCRIBED TERMS**

- 9.1 WallBeds Australia must be advised within 24 hours of delivery of any damaged or missing items received. This is inclusive of all carton-only items.
- 9.2 WallBeds Australia reserves the right to grant a conditional warranty on all wall bed cabinetry.
- 9.3 You have satisfied yourself with the description and condition of the Goods provided and their fitness for the purpose they were ordered.
- 9.4 To the extent permitted by law, all guarantees, warranties, and conditions other than those specified in these Terms and the Prescribed Terms are excluded.
- 9.5 Where the Prescribed Terms apply under the Australian Consumer Law, the following applies:
- Our goods come with guarantees that the Australian Consumer Law cannot exclude. 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 goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 9.6 Our liability for the breach of any Prescribed Term is limited (at Our election) to:
- (a) in the case of a major failure (as defined in the Australian Consumer Law), the extent permitted by the Australian Consumer Law; or

- (b) in any other case, the replacement of the goods, the supply of equivalent goods, the repair of the goods or payment of the costs of repairing the goods or obtaining equivalent goods.
- 9.7 To the extent permitted by Law and subject to clause 9.4:
  - (a) We will not be liable in any circumstance:
    - (i) for any personal injury or damage to property of any kind resulting from Your negligence, default under these Terms, or illegal act during Your use of the Goods;
    - (ii) any loss of or damage to Your property; and
    - (iii) any consequential loss suffered by You.
  - (b) Our total aggregate liability to You for all Claims arising out of these Terms in any way is limited to the total amount paid by You to Us for the Goods.
- 9.8 If You wish to make a claim for a breach of a Prescribed Term or a breach of a warranty (together, a **'Warranty Claim'**), You must cease use of the Goods and notify us by contacting Our nominated contact person as set out in clause 9.9 as soon as reasonably possible after the defect becomes evident, setting out the nature of the defect and providing evidence as reasonably required by Us.
- 9.9 We will not be liable for a Warranty Claim unless You have notified us within 6 months of the supply of the Goods.
- 9.10 The benefits given to You by any warranties in these Terms are in addition to other rights and remedies of a Consumer under the Prescribed Terms.
- 9.11 If You wish to make a Warranty Claim, you must contact:

McLeod Enterprises Pty Ltd ACN 104 969 271

Address: 175 Gilmore Road, Queanbeyan NSW 2620

Telephone: 1300 663 660

Email: [info@wallbedsaustralia.com.au](mailto:info@wallbedsaustralia.com.au)

You must describe the fault in the Goods at the time of making the Warranty Claim.
- 9.12 If Your claim is valid, Our liability is limited in accordance with clause 8, and You will bear any expenses incurred by You that arise from making the Claim.
- 9.13 The warranties are not transferable, and the service is available only to the original purchaser.

## **10 MANUFACTURER'S WARRANTIES**

- 10.1 The Next Bed Mechanism comes with a 7-year manufacturer warranty on manufacturer's defects. Misuse, abuse, or damage by misapplication are not covered.
- 10.2 The Alpha Steel Frame has a limited lifetime warranty on the manufacturer's defects.

- 10.3 The legs, leg connector rods, springs, and spring mechanism have a 7-year manufacturer warranty on the manufacturer's defects. Misuse, abuse, or damage by misapplication are not covered.
- 10.4 The Beta-Bed Wall Bed Hardware Kit comes with a 7-year manufacturer warranty on manufacturer's defects. Misuse, abuse, or damage by misapplication are not covered.
- 10.5 The mattress comes with a 2-year manufacturer warranty on the manufacturer's defects. Misuse, abuse, sagging or damage by misapplication are not covered.

## **11 FORCE MAJEURE**

We will not be liable for any failure to meet any obligations to the extent that such failure is caused by or arises from:

- (a) strikes, lockouts or other industrial disputes, shortage of labour or materials, delay in manufacturing by Us, Our associates or suppliers, civil commotion, fire, flood, drought, loss or delay at sea or otherwise, civil breakdown or war, or;
- (b) any other cause beyond the Our reasonable control, whether arising from natural causes or human agency,

and in such event, We may (at Our discretion) elect to cancel that Order or extend the time for performance, and You will not be relieved of any obligation to accept or pay for Goods by reason of any such delay in delivery.

## **12 GENERAL**

- 12.1 The law of New South Wales shall apply to these Terms, and You hereby submit to the jurisdiction of the Courts of that Territory.
- 12.2 If a provision of these Terms is invalid or unenforceable, it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 12.3 Each party must, at its own expense, do everything reasonably necessary to give full effect to these Terms and the events contemplated by it.
- 12.4 These Terms (and any documents executed in connection with it) are the parties' entire agreement about its subject matter and supersede all other representations, arrangements, or agreements.
- 12.5 These Terms may be amended only by a document signed by all parties.
- 12.6 A provision of or a right under these Terms may not be waived or varied except in writing signed by the person to be bound.