

## STANDARD CONDITIONS OF SALE OF SAFETY PRESCRIPTION EYEWEAR

### 1. General

#### 1.1. In these Conditions:

- 1.1.1. "the Seller" means Luxottica Retail Australia Pty Ltd ABN 26 000 025 758 in Australia and Luxottica Retail New Zealand Limited (NZBN: 9429 0386 58136) in New Zealand;
- 1.1.2. "the Buyer" means the Seller identified on the Details Form with whom the Seller contracts to sell the Goods either to the Buyer or to such of the Buyer's employees or referrals;
- 1.1.3. "the Goods" means the goods and materials identified by the Seller in the Price List, as updated from time to time; and
- 1.1.4. "the Services" means the services, including optical services and exams, offered by the Seller from time to time in its Retail Stores;
- 1.1.5. "Price List" refers to the price list provided by the Seller to the Buyer, as updated from time to time in writing, which sets out the purchase price of the Goods and Services available to purchase under the Agreement.

1.2. These Conditions, the Details Form, the Price List, and any Special Conditions represent the entire Agreement between the Buyer and Seller, and supersedes any terms and conditions previously issued by, or referred to, by either the Buyer or the Seller, and all orders made by the Buyer shall be deemed to be made subject to these Conditions.

1.3. No modification of these Conditions shall be effective unless made by an express written agreement between the Buyer to the Seller.

1.4. Nothing in these Conditions seeks to exclude or limit the Seller's liability with respect to the Buyer's rights as a consumer, or the rights and guarantees afforded to the Buyer under the applicable consumer laws.

1.5. In the event of any inconsistency between these Conditions, the Details Form, the Price List, and any Special Conditions, the order of precedence shall be as follows (1) the Price List, (2) Special Conditions, (3) Details Form, and (5) these Conditions.

### 2. Account

2.1. The Seller will only make the Goods available to purchase to such Buyers who have an active Contract Account with the Seller.

2.2. To obtain a Contract Account, a prospective Buyer must:

- 2.2.1. submit an approved Application Form to the Seller; and
- 2.2.2. be approved by the Seller and be set up with a Contract Account.

2.3. The Seller reserves the right to cancel, suspend or remove any Contract Accounts, in its sole discretion.

2.4. Each Application Form and Luxottica Eyewear Purchase Authorisation Form is a separate offer from the Buyer to engage the Seller to provide the Goods and Services on the terms of these Conditions.

2.5. On supply of the Goods or Services, or by written confirmation of accepting the offer, the Seller will confirm that they agree to provide the Goods and Services on these Conditions.

### 3. Ordering Goods and Services

3.1. The Goods and Services available for purchase are as set out in the Price List and any Schedules to the Agreement, provided by the Seller to the Buyer from time to time.

3.2. The Goods may be ordered from the retail fronts of the Seller trading as OPSM, EyeQ and Laubman and Pank ("Seller's Retail Stores").

3.3. All descriptions and illustrations in the Seller's materials, catalogues and advertisements or as otherwise communicated to the Buyer shall not form part of the Agreement and are subject to change from time to time.

3.4. The Seller may notify the Buyer of changes in Goods and Services available from time to time, including replacing or discontinuing Goods and Services, in its sole discretion.

3.5. The Buyer shall determine the suitability of the Goods and Services for their intended use and the Buyer shall not rely upon any representations made by or on behalf of the Seller.

3.6. The Seller may accept or decline any order for Goods or Services at its discretion.

3.7. Before supplying the Buyer with any Goods or Services, without limitation the Seller requires that the Buyer have a Contract Account.

3.8. Before a purchase can be made at the Seller's Retail Stores, the Buyer including such of its employees, referrals or authorised purchasers must provide the Seller's Retail Stores with:

- 3.8.1. an order for the Goods and/or Services using a Luxottica Eyewear Purchase Authorisation form;
- 3.8.2. a valid Purchase Order Number at the time of Order, if this information is required on the Seller's invoice;
- 3.8.3. a valid optical prescription, if the Goods ordered are a prescription product.

3.9. The Seller's Retail Stores can arrange eye testing with qualified Optometrists at the request of the Purchaser, such services and costs to be set out in the Price List or

such of its schedules, provided by the Seller to the Buyer from time to time.

#### **4. Price**

- 4.1. The price to be paid for the Goods and Services will be the Seller's list price prevailing upon the date upon which the Buyer's order for the Goods is accepted by the Seller, as set out in the Price List as updated from time to time.
- 4.2. The Seller shall be entitled to adjust the price to be paid for the Goods by such amount as it thinks fit at any time before the dispatch of the Goods in the event of any increase in the cost to the Seller in supplying the Goods, whether such increase shall result from higher costs of raw materials, labour, transport or overhead expenses, or from any other cause whatsoever.
- 4.3. The Seller shall be entitled to make an additional charge for postage and packing.
- 4.4. Purchases of the Goods and Services cannot apply or be used in conjunction with any special offer, sale, promotion or discount offered by the Seller in the Seller's Retail Optical Stores, unless such offer expressly applies to the Buyer, or such of its employees or referrals at the time of Purchase.

#### **5. Delivery, Risk & Title**

- 5.1. Every effort is made to meet delivery and handover dates, but a fixed date shall not be a condition of the supply of the Goods.
- 5.2. Late or delayed delivery or handover shall not entitle the Buyer to cancel the order or refuse to accept delivery of the Goods. The Seller shall not be liable for any loss, including consequential loss or damages, arising from such delays.
- 5.3. The Seller shall not be liable for any delay in delivery or handover, or failure to deliver or handover the Goods and Services due to circumstances beyond the Seller's reasonable control. Such circumstances include, but are not limited to, acts of God, explosions, fire, flood, pandemic, disease, war, hostilities, accidents, delays or failures in supply by the Seller's suppliers, mechanical breakdowns, industrial disputes (including strikes and lockouts), orders or decrees of any court, or actions of any governmental authority. In the event of any such occurrence, the Seller may, at its discretion, suspend or cancel, in whole or in part, any affected delivery without incurring liability.
- 5.4. Risk of loss or damage to the Goods shall pass to the Buyer at the time of delivery or handover.
- 5.5. The title to the Goods shall not pass to the Buyer until all sums due or owing by the Buyer to the Seller on any account whatsoever, (including the contract for the supply of the Goods), have been paid in full.

#### **6. Payment and Account**

- 6.1. Payment for the Goods shall be made in full without deduction or set off within thirty (30) days from the final day of the month in which the Goods are invoiced by the Seller.

- 6.2. The Seller is entitled to charge interest on any overdue amounts at a rate of 4% per annum above the Reserve Bank of Australia's official cash rate, calculated daily from the due date until payment is received in full. This provision does not entitle the Buyer to withhold or delay payment beyond the due date, nor does it affect the Seller's rights in relation to non-payment.
- 6.3. The Seller may require the Buyer to make payment in advance of delivery or handover.
- 6.4. If the Buyer fails to make payment by the due date, the Seller reserves the right, without prejudice to any other remedies available to:
  - 6.4.1. cancel this contract and/or any other contract with the Buyer for the supply of Goods; and/or
  - 6.4.2. to suspend further deliveries or handovers until full payment is received.
- 6.5. No payment shall be deemed to have been received until the Seller has received cleared funds.
- 6.6. If the Buyer disputes in good faith an amount in the invoice, the Buyer must notify the Seller in writing within fourteen (14) days setting out reasons for the dispute and the amount in dispute. Notwithstanding any dispute as to any amount of any charge, the Buyer must pay the undisputed amount of each invoice by the due date.
- 6.7. If the Buyer does not pay the invoice by the due date, the Seller may charge an administration fee of \$15 per month or part thereof or 1.5% per month on the outstanding amount of the invoice and suspend all or part of the supply of the Goods and Services pending payment of outstanding amount. Nothing in this clause affects the Seller's rights to terminate this agreement under Clause 9.
- 6.8. If the Buyer does not pay the invoice within 30 days after the due date, the Seller will, in its absolute discretion, elect to set off the outstanding amount of the invoice and any associated administration fees against the Buyer's invoice that the Supplier should pay (if any) in a mutual dealing or withhold the payment, until the Seller receives the full payment under this Agreement.

#### **7. Warranties**

- 7.1. The Seller warrants all Goods will conform to any specific safety standards indicated thereon. This warranty shall not apply in the event that any Goods has been subject to (a) further processing after its delivery, either at Buyer or at any third party's facility, by any lens processing equipment, including any edging, tinting or coating processes; (b) improper operation, misuse, modification, accident or neglect or acts of God; (c) changes or repairs made without prior written authorization of the Seller or by unqualified personnel, including, without limitation, any replacement or use of lenses other than such originally mounted by Seller and delivered as part of the Goods; or (d) storage in unsuitable physical or operating environment. The warranty granted to Buyer hereunder is solely for the benefit of its direct Buyers and shall not be extended to any other person or entity.

#### **8. Manufacturing Warranty**

8.1. The Seller, through the Seller's Retail Stores, will repair or replace any Goods which have a manufacturing fault or defect which is returned to the Seller's Retail Stores from which it was purchased, in accordance with the Manufacturing Warranty offered in each of the respective Seller's Retail Stores, as updated from time to time located as follows:

- 8.1.1. OPSM Australia: <https://www.opsm.com.au/eye-care/benefits/service-guarantee>;
- 8.1.2. OPSM New Zealand: <https://www.opsm.co.nz/eye-care/benefits/service-guarantee>
- 8.1.3. Laubman & Pank: <https://laubmanandpank.com.au/warranty-policy>;
- 8.1.4. EyeQ: <https://www.eyeq.com.au/return-exchange/>.

8.2. Any Goods returned to the Seller and replaced by the Seller shall be the property of the Seller.

8.3. To the maximum extent permitted by law, including the Australian Consumer Law and New Zealand Consumer Law, all other conditions, representations, warranties and guarantees, whether express or implied, by statute, trade or otherwise are expressly excluded unless the Seller otherwise agrees in writing.

## 9. Termination

9.1. A non-defaulting party may terminate this Agreement at any time, by written notice to the other party if:

- 9.1.1. the defaulting party becomes insolvent, goes into liquidation, convenes a meeting with its creditors to consider entering an arrangement with its creditors, or has a receiver, manager or administrator appointed; or
- 9.1.2. the defaulting party commits a material breach of this Agreement and fails to rectify that breach within 14 days of notice to do so.

9.2. If the Buyer:

- 1. fails to make payments in accordance with and within the period specified in the Agreement; or
- 2. commits a breach of its obligations under these Conditions or any other contract with the Seller;

then the Seller and the Seller's Retail Stores will be entitled to immediately and without notice suspend the supply of Goods and Services pursuant to these Conditions, and may also terminate this Agreement, without prejudice to any other remedy available to the Seller.

9.3. When the Agreement expires, or is terminated:

- 9.3.1. The Buyer must pay the Seller any unpaid charges for the Goods and Services; and
- 9.3.2. The parties will return each other's Confidential Information.

## 10. Liability

10.1. The total cumulative liability of the Seller and the Seller's Retail Optical Stores to the Buyer, arising out of or in connection with these Conditions or the purchase of Goods and/or Services subject to these Conditions shall be limited to 100% of the value of the invoice to which the claim relates.

10.2. In no event will the Seller's or the Seller's Retail Optical Stores' total liability toward Buyer for damages or losses incurred by it with respect to any Good exceed the amounts actually paid by Buyer to Seller for such Goods, as applicable; provided, however, that Seller's liability shall not be limited in amount with respect to Buyer's direct damages or losses as a result of personal injury to a third party which is caused as a result of Seller's gross negligence.

10.3. In no event shall Seller or the Seller's Retail Optical Stores be liable for any incidental, indirect, special, third party or consequential losses or damages arising out of, or in connection with, the supply or use of products, whether or not Seller was advised of the possibility of incurring such damage or loss.

## 11. Confidential Information

11.1. Each party owns its own Confidential Information.

11.2. During and after the Term, a party must not use or disclose the other party's Confidential Information other than:

11.3. if required to perform the Agreement.

11.4. if the other party has consented in writing; or

11.5. if required by law.

11.6. The parties must keep each other's Confidential Information in a secure manner.

11.7. On demand by one party and at the end of the Term, the other party must:

11.8. deliver to the demanding party all Confidential Information in its control; and then

11.9. delete all Confidential Information held electronically in any medium in its control, except for copies of documents that is required to retain by law.

11.10. For the purposes of this clause, Confidential Information means any information obtained by a party, its employees, agents or sub-Suppliers in performing the Services or the provision of the Goods during the Term of this Agreement, including this Agreement, the Conditions, the Price List, trade secrets, technical information and drawings, product and market information, any information marked confidential or which might reasonably be understood to have been disclosed to the other party in confidence. Confidential Information excludes information now or subsequently in the public domain (other than through breach of this Agreement or confidence of any other person), and information which the party can prove they lawfully possessed before obtaining it during the Term of this Agreement.

## 12. Miscellaneous

- 12.1. These Conditions shall be governed and construed in accordance with the laws of New South Wales, Australia.
- 12.2. Any delay, forbearance or indulgence granted by the Seller to the Buyer shall not affect or prejudice the Seller's rights, nor shall it be considered a waiver of any of these Conditions.

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