

Pull up a Chair - Sale Terms

1 Definitions and Interpretation

1.1 In this agreement:

- (a) **Collection Date** is the date we make the Deckchair available for collection from the Collection Location as specified in the Details.
- (b) **Collection Location** means the collection location specified in the Details.
- (c) **Date of this agreement** is the date in the Details, or, if blank, the date Your Order is accepted by Us in accordance with clause 2.3.
- (d) **Deckchair Terms of Use & Care Instructions** are the Deckchair terms of use and care instructions in Annexure A, as amended from time to time.
- (e) **Deckchair** means the deckchair, deckchair sling and/or any Associated Equipment specified in the Details.
- (f) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and GST has the meaning set out in the GST Act.
- (g) **Invoice** is an invoice for the Total Purchase Price and/or any other payments payable under this agreement, provided by Us and payable by You.
- (h) **Us, We, Our** refers to the Seller as set out in the Details.
- (i) **You, Your** refers to the Customer as set out in the Details.
- (j) no provision of this agreement is to will be construed adversely to a party because that party was responsible for the preparation of this agreement;
- (k) where You comprise more than one person, the undertakings and agreements on their part contained or implied in this agreement bind them jointly and severally;
- (l) the words 'including' or 'for example' are not words of limitation; and
- (m) headings do not affect the meaning.

2 Quotation, Acceptance and Sale and Purchase

2.1 You may request to buy a Deckchair by contacting Us by email, via Our website or by phone (**Order**). Upon submitting Your Order, We may provide You with a quotation, cost estimate or proofs of the Deckchair and Our Invoice.

2.2 If Your Order includes artwork on the Deckchair, it is Your responsibility to provide Us with accurate and high resolution images of the artwork which does not infringe the rights of any third parties. We are not obliged to:

- (a) check that the artwork provided by You is accurate, of a high quality and does not infringe the rights of any third parties; or
- (b) store or keep any artwork provided by You.

2.3 Your Order is only accepted by Us once we receive payment in full of Our Invoice.

2.4 By paying Our Invoice, You are deemed to accept this agreement.

2.5 Any quotation or proofs prepared or provided by Us may be withdrawn or varied at any time prior to Us accepting the associated Order under clause 2.3.

3 Collection of the Deckchair

3.1 Upon receipt of the Total Purchase Price in cleared funds, subject to clause 3.2, We will endeavour to make the Deckchair available for collection by You or Your authorised representative, on the Collection Date from the Collection Location.

3.2 It is Your responsibility to inspect the Deckchair prior to the Deckchair leaving the Collection Location. If You do not notify Us that the Deckchair is faulty at the time of collection, You are deemed (to the extent permitted by law) to have accepted the Deckchair.

3.3 You agree that the Deckchair includes wood which is a natural product and may have natural defects including shrinkage, warping, splitting, splintering, knots, discolouration and that any natural defects do not constitute a fault in the Deckchair.

3.4 The Collection Date is an estimate only. While We will endeavour to have the Deckchair ready for collection then and to notify You of any changes, We are not liable for any loss or damage whatsoever arising from the Deckchair not being available for collection on the Collection Date.

3.5 The Total Purchase Price does not include the cost of collecting the Deckchair from the Collection Location and delivery from the Collection Location.

3.6 You agree that all arrangements for the collection of the Deckchair from the Collection Location and delivery to any other location are Your sole responsibility and You must make all necessary arrangements for the safe and lawful collection and delivery of the Deckchair from the Collection Location. We may, but are not obliged to, provide You with details of third parties that may provide services to collect and deliver the Deckchair to the final destination.

3.7 Without limiting any provision of this agreement, We are not and will not be responsible nor liable for any loss or damage arising from the collection and/or delivery of the Deckchair whatsoever.

4 Risk and Title

4.1 Risk in the Deckchair passes to You immediately on the collection of the Deckchair from the Collection Location. We are not liable for any loss or damage to the Deckchair occurring after that time.

4.2 Notwithstanding the passing of risk, title to the Deckchair will not pass to You until all amounts payable to Us by You are paid in full.

5 Your obligations

5.1 You agree that from the Collection Date, it is Your obligation to:

- (a) keep and maintain the Deckchair in proper working order and condition and in good and substantial repair having regard to the Deckchair Terms of Use & Care Instructions;
- (b) only use the Deckchair in a proper and skilful manner and having regard to the Deckchair Terms of Use & Care Instructions and all applicable laws including all relevant health and safety legislation;
- (c) use only parts and fittings on the Deckchair that are approved by Us; and
- (d) maintain at Your cost, all appropriate policies of insurance including insurance for personal injury, fire damage and theft during the collection and delivery of the Deckchair.

6 Total Purchase Price and other payments

6.1 You must pay the Total Purchase Price by cleared funds on or before the payment date in the Details via the payment method specified in Our Invoice.

6.2 If, after We accept an Order, any changes made by You to:

- (a) Your Order as accepted by Us;
- (b) the Collection Date;
- (c) the Collection Location; and/or
- (d) the method of collection from the Collection Location,

will be at Your cost. We will notify You of any additional charges related to any changes (including additional storage charges) and such charges must be paid for in full before the Deckchair will be made available for collection. If an amount is due under this agreement but is unpaid, interest shall be due on the overdue amount at the rate specified by the Reserve Bank of Australia cash rate target (accessible at <http://www.rba.gov.au/statistics/cash-rate/>) current at the date such amount is due, calculated daily from the due date until the payment is received in full.

6.4 In this clause, a word or expression defined in the GST Act has the meaning given to it in that Act. In this agreement:

- (a) any prices supplied under this agreement are exclusive of GST unless expressly provided otherwise; and
- (b) if a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 6.4 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.

7 Exclusion of liability

To the extent permitted by law, You agree:

7.1 the Deckchair is sold 'as is' without warranty or guarantee of any kind, express or implied;

7.2 that the Deckchair includes wood which is a natural product and may have natural defects including shrinkage, warping, splitting, splintering, knots, discolouration. We are not liable to You for any natural defects as determined by Us in Our sole discretion;

- 7.3 We exclude all warranties and guarantees whether express, implied, statutory or otherwise relating in any way to the Deckchair, and/or any other subject matter of this agreement. Nothing in this clause restricts or modifies any right of remedy under the *Australian Consumer Law*;
- 7.4 You agree to collect, deliver, use and possess the Deckchair entirely at Your risk and that We are not liable for any loss or damage as a result of use of the Deckchair by You or any third party. To the extent permitted by law, You release and discharge Us and Our agents and employees from:
- (a) all claims and demands on Us; and
 - (b) any loss or damage whatsoever and whenever caused to You,
- arising directly or indirectly from or incidental to any Deckchair, defect in any Deckchair, or any accident to or involving any Deckchair or its use, operation, repair, maintenance or storage or which may otherwise be suffered or sustained in, upon or near the Deckchair;
- 7.5 for any loss or damage which cannot otherwise be excluded by law, Our liability for any loss or damage which You or any third party suffers arising from, or caused or contributed to by, Our negligence, is limited to the Total Purchase Price paid by You; and
- 7.6 neither party is liable to the other for any indirect or consequential loss or special damage incurred by the other party under or in relation to this agreement.
- 8 Indemnities**
- To the extent permitted by law, You agree:
- 8.1 You are liable for and indemnify Us against any and all liabilities, claims, action, damage, loss, costs, penalties and expenses (including legal fees and costs) which We suffer, incur or are liable for in connection with (a) a breach by You of this agreement, (b) Your use of the Deckchair and/or (c) any other act or omission by You pursuant to this agreement or in relation to the Deckchair.
- 8.2 the indemnities and assumptions of liability contained in this clause survive the expiry or termination of this agreement.
- 9 Cancellation, Refunds and Termination**
- 9.1 Please place Your Order carefully as it is not possible to cancel Your Order or receive a refund of any amounts paid under this agreement once We receive the Total Purchase Price from You simply for a change of mind. If We receive the Total Purchase Price from You, We may but are not obliged to, accept Your cancellation and refund any amounts paid by You under this agreement, in Our discretion, but always subject to law.
- 9.2 We may terminate this agreement at any time immediately without liability to You if:
- (a) You fail to pay the Total Purchase Price or other charges payable under this agreement;
 - (b) You breach this agreement;
 - (c) You fail to perform or observe any undertaking or provision of this agreement on Your part to be performed or observed;
 - (d) You become bankrupt, insolvent, or are placed into liquidation, administration or receivership;
 - (e) You being a natural person, die; and/or
 - (f) We consider, on reasonable grounds, that fulfilling Our obligations under this agreement may endanger the safety of any person or the condition of the Deckchair.
- 9.3 You agree that if We terminate under clause 9.2:
- (a) We may repossess the Deckchair; and
 - (b) You are not entitled to a refund of all or any part of the Total Purchase Price or any other payments made by You under this agreement.
- 10 General**
- 10.1 Any description, illustration, image or other depiction of the Deckchair contained in Our marketing material, catalogues, quote or advertising is for illustrative purposes only and does not form part of this agreement.
- 10.2 Nothing contained or implied in this agreement will be deemed or construed to create the relationship of partnership, of principal and agent, of joint venture or any fiduciary relationship between Us and You.
- 10.3 You agree to promptly do all further acts and deliver all further documents required by law or reasonably requested by Us to give effect to this agreement.
- 10.4 All notices under this agreement must be in writing, and delivered to the relevant party's Email in the Details.
- 10.5 This agreement may not be varied unless otherwise agreed between the parties in writing.
- 10.6 Not exercising any right, remedy or power it may have under this agreement, a party does not waive any right a party may have to exercise any such right, remedy or power it has under this agreement.
- 10.7 This agreement is governed by the laws of Western Australia, and the parties agree to submit to the jurisdiction of the Western Australian courts.
- 10.8 Any part or provision of this agreement which is invalid, void or unenforceable is to be read down or severed, and the rest of the agreement applies in full force and effect.

ANNEXURE A – Deckchair Terms of Use & Care Instructions

- Use of the deckchair is entirely at your own risk. If you do not accept this risk, you must not use the deckchair.
- Children using or in the vicinity of the deckchair must be supervised by a responsible and sober guardian or adult at all times.
- The weight load on the deckchair must not exceed 250kg at any one time.
- You must not use the deckchair if you are intoxicated or under the influence of illicit drugs.
- Crockery, cutlery and glassware must not be used on or near the deckchair.
- Food and drinks must not be consumed whilst on or near the deckchair.
- Do not use the deckchair if it is windy or under any adverse weather conditions.
- Please do not climb, jump, stand or slide on the deckchair. It is intended to be used as a chair for sitting on so use it accordingly.
- When the deckchair is in use please ensure the lock is in place and it is on a firm/level surface.
- Exercise caution when folding or unfolding the deckchair so as not to catch your fingers or hands in the hinges of the deckchair.
- The deckchair requires at least two (2) able bodied persons to move in any circumstances.
- The deckchairs are suitable to be used outside but we recommend keeping them inside or undercover when not in use.
- The wood on the deckchair should be treated with a water based stain at least once each year.
- We recommend sanding any splinters on the deckchair as they occur.
- If you are regularly folding / collapsing the deckchair it may result in the bolts becoming loose. Please check and tighten the bolts on the deckchair regularly.
- If the deckchair is frequently used, we recommend replacing the sling regularly.
- We recommend hosing down the sling with fresh water and a soft brush on a regular basis to remove any surface dirt. For more stubborn stains, we recommend using warm water with a soft detergent and to rinse thoroughly. Do not use any pressure washer or any other cleaning product to clean the deckchair.
- We recommend reproofing the fabric on the sling after cleaning.
- To prevent mould, please ensure the chair is cleaned and completely dried naturally before storing the deckchair.