

# Terms & Conditions

## 1 General

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Last updated: October 2019

Please read these Terms and Conditions ("Terms", "Terms and Conditions") carefully before using, browsing, selecting and ordering any products advertised on the website [www.fxhangingsystems.com.au](http://www.fxhangingsystems.com.au) (the "Site") operated by ACN 134 280 854 Pty Ltd trading as FX Hanging Systems ("us", "we", or "our").

Your access to and use of the Site is subject and conditional on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users, purchasers and others who access or use the Site.

**By accessing or using the Site you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the Site.**

General Disclaimer:

Because of the wide variety of constructions on which our picture hanging equipment might be used it is impossible to give a general warranty as to the suitability of any particular application. We recommend that you obtain advice from a qualified builder or tradesman familiar with the application. Alternatively, you can approach us with a written request for information about the use of the particular hanging systems in particular applications.

Subject to the information that you provide us we can provide you with guidance as to the most appropriate system for your needs.

## 2 Interpretation

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### 2.1 Definitions

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Customer** means you ("you", "your")

**Goods** mean any goods supplied by the Seller.

**Loss** includes, but is not limited to, costs (including party to party legal costs and the our legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means a purchase order for Goods placed by you through the Site or otherwise in writing.

**Seller** means ACN 134 280 854 Pty Ltd trading as FX Hanging Systems.

## **2.2 Interpretation**

In these Terms, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Site (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

## **3 Placing an Order**

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- (a) These Terms apply to all orders.
- (b) You may order Goods by selecting and submitting your order through the Site.
- (c) Any order placed by you through the Site is an offer by you to purchase the particular Goods at the price specified on the Site at the time you place the order (including any charges for delivery, GST and any other taxes applicable).
- (d) It is your responsibility to provide us with your accurate, complete and current details and you warrant that the details provided to us at the time the order is submitted are accurate, complete and current.

## **4 Acceptance or rejection of order**

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- (a) We reserve the right to accept or reject your order for any reason.

- (b) We may in our absolute discretion refuse to provide the Goods where: (i) The Goods are unavailable for any reason whatsoever;
- (ii) There is an error in:
  - (A) the price; and/or
  - (B) the Goods description; and/or (C) in your order.at the time you place the order;
- (iii) full payment by you for the Goods (including delivery charges, if applicable) has not been received by us.
- (c) If we reject an order placed by you through the Site, we will notify you of our decision to reject the order as soon as practically possible after you submit your order.
- (d) For clarity, each accepted order constitutes a separate binding agreement between you and us for the supply of Goods.
- (e) An order cannot be cancelled by you without the prior written consent by us. Where an order is cancelled, you indemnify us against any Losses incurred by us as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the order which is subsequently cancelled.

## **5 Delivery**

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- (a) We offer free delivery Australia-wide but international deliveries will incur a fee. We will advise you of the applicable charges as soon as practicable after the order is placed and will require you make the payment in full before the Goods are dispatched.
- (b) We will deliver the Goods to a location specified by you at the time you place the order through the Site. We will advise you of the tracking details as soon as reasonably practical after the Goods are dispatched.
- (c) We will endeavour to deliver the Goods to you within seven (7) days from the date of the Order (within Australia only). Please note that international delivery may take longer and the timeframe will be subject to your delivery location and delivery carrier availability. We do not provide any warranties with respect to delivery times, which you acknowledge are outside of our control.
- (d) We require you to sign for the Goods at the time of delivery. If you are not in attendance at the nominated location at the time of the delivery, a freight card will be left for you. If you direct the delivery carrier to leave the Goods unattended at the nominated location, you agree that we shall not be responsible for any claims, damages, costs, or expenses arising out of or resulting therefrom, including any claim that the Goods were not delivered.

## **6 Variations**

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- (a) You may request that your Order be varied by sending us an email.
- (b) A request for a variation must be agreed to in writing by us and you must pay any additional costs payable as a result of the variation in order for the variation to have effect.

## **7 Payment**

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- (a) We will charge you and you agree to pay the following fees and charges relating to your order (as applicable):
  - (i) The purchase price for the Goods;
  - (ii) The delivery fee according to your location/ the method of delivery elected by you;
  - (iii) Any cancellation costs pursuant to paragraph 4(e);
  - (iv) Any Goods and Services Tax (GST);
  - (v) Any fees and charges as set out in these Terms.
- (b) You must pay all fees and charges for your order at the time you place the order for your order to be valid.
- (c) You will be liable to pay any additional costs incurred by us as a result of us relying on inadequate or incorrect information or material provided by you (i.e. additional delivery fees incurred as a result of you providing an incorrect or an incomplete delivery address).

## **8 Returns & Exchanges**

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- (a) If you are unsatisfied with the Goods for any reason, or if you simply change your mind, you may return any of the Goods for a full refund or exchange them for other Goods (subject to availability) within fourteen (14) days from the date of delivery, provided that the Goods are returned in their original, unused condition and in the original packaging.
- (b) If you wish to return the Goods, you should contact us in writing before expiry of fourteen days from the date of delivery to make arrangements to return the Goods to us.
- (c) On receipt of the Goods:

- (i) we will refund the full original purchase price within 3-5 business days; or
  - (ii) in case of exchange, we will dispatch your replacement Goods within 1-2 business days (subject to availability).
- (d) We are not liable for any postage costs and/or any other costs incurred by you as a result of you returning the Goods to us for a refund or exchange.

## **9 Acceptance of Goods**

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If you fail to advise us in writing of any fault in Goods or failure of Goods to accord with your order within fourteen (14) days of delivery, you are deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with your order.

Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.

## **10 Exclusions and limitation of liability**

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Without excluding, restricting or modifying any rights and remedies that may be available to you under the Australian Consumer Law:

- (a) To the full extent allowed by law our liability for breach of any term implied into these Terms by any law is excluded.
- (b) You expressly agree that use of the Goods is at your own risk and that installation of the Goods is at your own risk and should be performed by a professional.
- (c) All information, specifications and samples provided by us in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect your use of the Goods will not entitle you to reject the Goods upon delivery, or to make any claim in respect of them.
- (d) Any advice, recommendation, information, assistance or service given by us in relation to Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any Loss suffered as a result of your reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, we are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide the Goods, or otherwise arising out of the provision of the Goods, whether based on Terms, negligence, strict liability or otherwise, even if we have been advised of the possibility of damages.

- (f) The Australian Consumer Law may give to you certain guarantees. Where liability for breach of any such guarantee can be limited, our liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or to the cost of resupply or replacement of the Goods.

## **11 Force majeure**

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- (a) If circumstances beyond our control prevent or hinder our ability to provide the Goods, we are free from any obligation to provide the Goods while those circumstances continue and may elect to cancel the order or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond our control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

## **12 Miscellaneous**

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- (a) These Terms are governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These Terms and any written variations agreed to in writing by us represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms, you have not relied on any warranty, representation or statement, whether oral or written, made by us or any of our employees or agents relating to or in connection with the subject matter of these Terms.
- (e) If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing by email specified in the order or on the Site (as applicable).
- (h) A party may only change its postal or email address by giving notice of that change in writing to the other party.