



## 1. Interpretation

1.1 In these Terms and Conditions of Sale:

**Buyer** means the purchaser of the Goods, whose details are set out in the Order.

**Goods** means 'UV Meter' – a real-time monitor of ultraviolet radiation with large format display and its component parts and, if any, services specified in the Order

**Intellectual Property Rights** means all intellectual property rights including the following rights:

- (a) Patents, copyrights, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and
- (b) A licence or other right to use or to grant the use of any of the above or any application or right to apply for registration of any of the rights referred to in clause 1.1(a).

**Installation Manual** means the manual provided to the Buyer upon delivery of the Goods with instructions for the safe and proper installation of the Goods.

**Order** means the order placed by the Buyer to purchase Goods from the Seller.

**Price** means the price for the Goods as stated in the Order placed by the Buyer.

**Seller** means Cancer Council Western Australia Inc ABN 15 190 821 561 of Level 1, 420 Bagot Road, Subiaco, Western Australia, which is the seller of the Goods.

1.2 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

## 2. General

2.1 These Terms and Conditions of Sale (which shall only be waived in writing signed by the Seller and Buyer) shall prevail over all conditions of the Buyer's Order to the extent of any inconsistency.

## 3. Terms of Sale

3.1 All Orders are accepted and Goods sold and supplied on these Terms and Conditions of Sale. Any direction by the Buyer either verbal or written to procure Goods from the Seller will be deemed as acceptance by the Buyer of these Terms and Conditions of Sale.

## 4. Buyer's Obligations

4.1 The Buyer must:

- (a) install the Goods at its expense and in accordance with the Installation Manual;
- (b) install the Goods in a location that has reliable access to a mobile phone signal;
- (c) maintain a mobile internet connection in accordance with clause 5.
- (d) contact the Seller immediately if the Goods fail to operate or are otherwise damaged or defective for any reason.

## 5. Mobile Internet Connection

5.1 The Buyer acknowledges that for the purpose of remote calibration, monitoring, trouble-shooting and software updates by the Seller, the Goods must be connected to the internet at all times.

5.2 The Goods are supplied initially with a pre-configured mobile internet connection on a monthly data plan. The initial [three year] subscription is included in the Price of the Goods.

5.3 The Seller is not liable for any failure of the data network, which is the sole responsibility of the data carrier.

5.4 Upon expiry of the initial subscription to the data plan, the Buyer agrees to renew the subscription and will be issued an invoice by the Seller. The invoice will reflect the cost of the data plan at the time of renewal. The Seller reserves the right to change data carriers if necessary.

5.5 Data from the UV sensor within the Goods will be reported to a website managed by the Seller. The data will include the unique name of the installation, its location and both current and historic UV strength information recorded by the unit. The Buyer consents to such data being published and dealt with in this way.

## 6. Passing of Title

6.1 Title to the Goods free of encumbrances and all other adverse interests shall pass to the Buyer upon full payment for the Goods.

## 7. Risk

7.1 The Goods are at the Buyer's risk from the date of delivery to the address nominated by the Buyer.

## **8. Terms of Payment**

- 8.1 The Seller is not required to deliver the Goods until the Buyer has paid to the Seller:
- The Price for the Goods;
  - Any Goods and Services Tax (GST) attributable to the Price;
  - All costs incurred by the Seller in delivering the Goods to the Buyer, including but not limited to all packaging, shipping, courier and insurance costs.
- 8.2 Payment for Goods may be made by credit card (Visa or Mastercard), cheque, Bpay or direct deposit.

## **9. Delivery of Goods**

- 9.1 The Seller endeavours to deliver the Goods to the address nominated by the Buyer within 25 business days of the Order, but will not be liable to the Buyer for any loss, damage or delay occasioned to the Buyer arising from late or non-delivery of the Goods.

## **10. Loss or Damage in Transit**

- 10.1 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- 10.2 The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damage to Goods in transit so long as the Buyer:
- has notified the Seller and the carrier in writing immediately after loss or damage is discovered on receipt of Goods; and
  - serves a claim for compensation on the carrier within 7 days of the date of receipt of the Goods.

## **11. Warranty Against Defects**

- 11.1 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. 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 the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.2 Subject to clause 11.4, the Seller warrants that the Goods are free from defects in workmanship and materials for a period of two years (Warranty Period) from the date of purchase. Subject to clause 11.3, if the Goods fail to operate or are otherwise damaged or defective for any reason within the Warranty Period and the Goods are returned to the Seller, the Seller will at its option repair or replace the Goods at no cost to the Buyer.
- 11.3 To the full extent of the law, but subject always to clause 11.1, the warranty referred to in clause 11.2 does not apply where the failure of the

Goods to operate or the damage or defect has arisen from:

- fair wear and tear, including damage to or corrosion of painted surfaces;
  - improper adjustment, calibration or operation of the Goods by the Buyer;
  - the use of accessories including consumables, hardware or software which were not manufactured by or approved in writing by the Seller;
  - any modification of the Goods which was not authorised in writing by the Seller;
  - incorrect installation of the Goods;
  - inadequate or improper maintenance of the Goods;
  - failure to maintain a mobile internet connection in accordance with clause 5.
  - vandalism of the Goods, however caused;
  - misuse or abuse of the Goods;
  - transportation or shipping of the Goods.
- 11.4 The battery and electronics unit included in the Goods each carry a 12 month limited manufacturer's warranty and that warranty is the only warranty given by the Seller to the Buyer in respect of those components of the Goods.
- 11.5 Any claim under the warranty in clause 11.2 should be made by contacting the SunSmart Manager, Cancer Council WA, Level 1, 420 Bagot Road, SUBIACO WA 6008 or (08) 9388 4360 or sunsmart@cancerwa.asn.au. The Buyer bears any expense of claiming the warranty, save that the Seller bears the cost of transporting or shipping the Goods to the Buyer after repair or replacement if the claim is found to be valid.
- 11.6 The Goods will be at the Buyer's risk whilst in transit for the purpose of claiming under the warranty in clause 11.2.
- 11.7 The benefits given to the Buyer under the warranty in clause 11.2 are in addition to other rights and remedies of the consumer under a law in relation to the Goods to which the warranty relates. To the extent permitted by law, all other warranties and representations express or implied and whether arising by virtue of statute or otherwise are hereby excluded.

## **12. Acknowledgment Regarding Facilities for Repairs or Parts**

- 12.1 The Buyer acknowledges that the Seller does not promise or represent that facilities for the repair or replacement of the Goods, or parts of the Goods will be available after five years from the date of purchase.

## **13. Limitation of Liability**

- 13.1 Subject to clause 13.2, and to the extent permitted by the Australian Consumer Law and relevant State legislation, the sole obligation of the Seller under these Terms and Conditions of Sale is to use its best endeavours to provide the Goods or to repair the Goods or repair or replace any part of the Goods if the Goods fail to operate or are otherwise damaged or defective

- for any reason during the Warranty Period under the warranty in clause 11.2. In no event shall the Seller be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods, and any incidental, indirect, special or consequential damages or injury to any person, corporation or other entity.
- 13.2 Nothing in this clause excludes or restricts or modifies any condition, warranty, right or remedy which is conferred on consumers pursuant to the Australian Consumer Law or similar State legislation. However, if any Goods supplied pursuant to these Terms and Conditions of Sale are Goods not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law and similar provisions of relevant State legislation the Seller limits its liability for failure to comply with a consumer guarantee to:
- (a) the replacement of the Goods or the supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired,
- whichever is the lower amount.
- 13.3 Subject to clause 13.2, the Seller is not liable for default or failure in the performance of its obligations pursuant to these Terms and Conditions of Sale resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes or any other cause beyond the reasonable control of the Seller.
- 14. Intellectual Property Rights**
- 14.1 All Intellectual Property Rights in connection with the Goods remain the property of the Seller.
- 15. Return of the Goods**
- 15.1 The Buyer must not return the Goods to the Seller unless the Seller consents to the return of the Goods.
- 16. Cancellation**
- 16.1 No Order may be cancelled by the Buyer except with the written consent of the Seller. In the event of a cancellation of the Order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.
- 17. Force Majeure**
- 17.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Seller or the Buyer either is unable to perform in whole or in part any obligation under these Terms and Conditions of Sale then:
- (a) that party is relieved of that obligation under these Terms and Conditions of Sale to the extent and for the period that it is unable to perform such obligation; and
  - (b) that party will not be liable to the other party under these Terms and Conditions of Sale for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.
- 18. Indemnity**
- 18.1 The Buyer indemnifies the Seller, its employees, agents and contractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result of, whether directly or indirectly, any failure of the Buyer to perform any of its obligations under these Terms and Conditions of Sale or as a result of any claim, except to the extent the claim arises due to the negligence of the Seller, its employees, agents or contractors.
- 19. Buyer Default**
- 19.1 If the Buyer defaults or commits any breach of its obligations, then the Seller may (without prejudice to any other claims or rights which it may have) immediately cancel any uncompleted Order or cancel or suspend delivery.
- 19.2 In exceptional circumstances, the Seller may direct the Buyer to remove the Goods from public display.
- 20. Governing Law**
- 20.1 These Terms and Conditions of Sale and any contract including them shall be governed by and construed in accordance with the laws of the State of Western Australia and the Seller and the Buyer submit to the non-exclusive jurisdiction of the courts and tribunals of Western Australia. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Magistrates Court of Australia.