

TOWN & COUNTRY STYLE PTY LTD

ABN 93 269 942 981

59 Grange Road, Cheltenham VIC 3192, Australia Tel 61 3 9576 3000 Fax 61 3 9576 1177 Email sales@townandcountrystyle.com.au

TOWN AND COUNTRY STYLE PTY LTD TERMS AND CONDITIONS AND CLIENT AGREEMENT (RETAIL CLIENTS ONLY)

These Terms and Conditions constitute an agreement between **You** and **Town and Country Style Pty Ltd** (ACN 006 886 611) ("**TCS**"). Please read them carefully as they set out the Terms and Conditions under which **You** purchase products from **TCS**. By completing the Client Registration form and either using the **TCS** website or accepting any written offer or quotation by **TCS** to supply **You** agree to be bound by the Terms and Conditions of this agreement. "**You**" and "**Customer**" means the person named as the Client on any Client Registration form or other form of application or Order for the supply of Goods completed or made by such person and any person using the website (and "**Your**" has the corresponding meaning).

1. AGREEMENT

The entire agreement between **You** and **TCS** for the purchase of Goods by **You** from **TCS** comprises:

- (a) **Your** Account Information Form whether in written form or completed electronically by means of the website;
- (b) any quotation or written offer to supply Goods by **TCS**;
- (c) these Terms and Conditions;
- (d) **Your** Order;
- (e) **TCS** Privacy and Security Statement.

An agreement exists between **You** and **TCS** once:

- (i) **TCS** receives an Order and does not reject it before confirming dispatch of the Order.
- (ii) **TCS** confirms and accepts an Order by notifying **You** in written or electronic form confirming receipt of the Order and/or **You** receive written or electronic notification confirming dispatch of the Order; and

Until confirmation of dispatch of an Order **TCS** may reject **Your** Order and refund any payment made by **You**.

Each Order is a separate agreement and these Terms and Conditions will be deemed to be incorporated into any and each agreement between **TCS** and **You**. Any terms and conditions contained in any Order, acceptance or other document from **You** and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in these Terms and Conditions are expressly excluded to the fullest extent permitted by law.

All Orders by **You** for Goods must be made by way of order form transmitted electronically, by facsimile, by post or hand delivery to **TCS** and will be deemed to be an offer by **You** to purchase the Goods pursuant to these Terms and Conditions.

The price payable for the Goods will be the price as detailed on this website.

The Goods will be deemed ordered and supplied in accordance with the description and the product number detailed on this website.

2. CLIENT REGISTRATION

Before **You** place an initial Order for Goods with **TCS** by means of this website **You** must fully complete a Account Information Form. **You** must also warrant to **TCS** that all information and details provided by **You** in that form are accurate, complete and current. As this information will be relied upon by **TCS** in processing subsequent Orders **You** must promptly notify **TCS** of any change to this information.

Any costs associated with accessing the **TCS** website and placing Orders for Goods on the website including, but not limited to, internet provider fees are **Your** sole responsibility.

3. ORDERS AND DELIVERY

TCS will arrange delivery if **You** are located in the delivery areas serviced by its third party nominated carrier. The charges for delivery will be added to the price of the Goods. If **You** are not located in the delivery areas **you** must contact sales@townandcountrystyle.com.au for delivery pricing.

TCS will not accept any responsibility to **You** for any loss or damage **You** may suffer by reason of any delay in delivery whether same is due to negligence of **TCS** or any other party or due to strike or any other industrial action be it of **TCS** or from any other cause or party whatsoever beyond the reasonable control of **TCS**.

Your liability to pay for Goods together with GST arises at the time of Order.

Anyone at the delivery address who receives the Goods will be presumed by **TCS** to be authorised to receive the Goods.

Delivery of the Goods will be deemed to have been made when **TCS** fills **Your** Order, issues an invoice and/or collates and prepares the Goods and notifies **You** they have been dispatched.

A minimum of 48 hours is required from receipt of payment until Goods are ready for shipment.

If there is no-one at the delivery address when the Order is delivered **TCS** may charge **You** and **You** must pay an additional delivery fee if a further delivery attempt is made. If delivery is not possible **TCS** will arrange return of the Goods to it and will be entitled to payment of the cost of attempted delivery or other shipping costs and any relevant taxes and duties which may, at the discretion of **TCS**, be deducted from any part of the purchase price which may be refunded to **You** following such attempted delivery.

4. PRICING AND PAYMENT

The price of the Goods specified on this website is the price which is applicable at the time **You** view it and place **Your** Order and are GST inclusive.

Payment for all purchases must be on a fully pre-paid basis made at the time of **You** placing each Order.

If payment is made by credit card, by doing so **You** warrant to **TCS** that **You** are an authorised user of the credit card used to complete payment for each Order.

5. RISK AND OWNERSHIP IN THE GOODS

5.1 Notwithstanding delivery of the Goods, title in the products will not pass to **You** until the later of delivery or the date **Your** payment has been processed or otherwise received by **TCS**. If **Your** payment is declined for any reason **TCS** reserves the right to reclaim the products from **Your** possession, custody or control even if they have been delivered to **You** or moved from the delivery address. **TCS** reserves the right to keep or sell the products. Subject to the **TCS** Returns and Refunds policy set out below, risk of loss, damage or deterioration to any products will pass to **You** on delivery.

5.2 **You** acknowledge and agree that clause 5.1 creates a purchase money security interest in the Goods which **TCS** is entitled to register under the Personal Property Securities Act 2009 (Cth) ("PPSA"). To the extent permitted under the PPSA, **You** and **TCS** agree to contract out of the provisions listed in Section 115 of the PPSA. **You** waive **Your** right to be provided with verification statements under section 157 of the PPSA. It is agreed by **You** and **TCS** that neither will disclose to any third person information of the type referred to in Section 275(1) of the PPSA and that for the purposes of Section 275(6) of the PPSA this is a confidentiality agreement.

6. RETURNS OR REFUNDS

6.1 TCS 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.

6.2 Subject always to the preceding sub-paragraph 7.1 and to paragraph 5 of these Terms and Conditions, if **You** are not satisfied with the Goods or if they are faulty or damaged **You** may, at the discretion and with the written authorisation of TCS, return the Goods for repair, exchange or refund but only if **You** comply with the following process:

(a) **You** must inspect the Goods at the time of delivery and complete the Delivery Goods Advice form or Consignment Note provided by our nominated carrier confirming receipt of the Goods in good condition or identifying any damage or defect in the Goods.

(b) **You** must notify TCS of **your** dissatisfaction with the Goods or of any claim arising from any defect or damage within seven days of receipt of the Goods or, where such defect only becomes apparent after receipt of the Goods and completion of the Delivery Goods Advice form or Consignment Note, within 7 days of the defect becoming apparent. That notification must include full details of the nature of the claim;

(c) notification to TCS must be made in writing by email to returns@townandcountrystyle.com.au or by facsimile (03) 9576 1177 following which **You** will be provided with a "Returns Confirmation";

(d) **Your** Returns Confirmation must be provided when returning Goods;

(e) returns must be made utilizing a TCS nominated carrier and will be arranged by TCS at the earliest opportunity as determined by TCS;

(f) provided the returns process is followed TCS will at its discretion either refund the purchase price in full, repair or replace the Goods as soon as is reasonably practicable;

(g) if TCS agrees to refund the purchase price to **You** the refund will only be credited or paid to the original source of payment and will be processed by TCS usually within seven days of return to the TCS warehouse less a re-stocking fee of 20% calculated on the GST inclusive price of the Goods;

(h) if **Your** return arises from **Your** dissatisfaction with the Goods and not any defect or damage claim **You** must in addition to the re-stocking fee pay a collection fee being the greater of \$50.00 or the amount of the delivery fee charged as part of the purchase price.

(i) replacement of Goods is subject to availability of the same item and style and repair of Goods will be undertaken at the cost of TCS and in accordance with the same delivery terms as for purchases and in all respects at the cost of TCS;

TCS will not accept any claims, returns nor any liability for repair, exchange or refund in respect of defects or damage caused in whole or in part by misuse, abuse, neglect, accident, failure to follow product warning or care information (either provided with the Goods or available on the website) or where repairs or alterations have been made to the Goods, save where such repairs or alterations have been carried out or authorised by TCS.

7. APPEARANCE, PRESENTATION AND CARE OF GOODS

TCS will at all times endeavour to include on the website up to date pictures, representations or descriptions of the Goods. At times the picture of the Goods displayed online on **Your** computer monitor may differ from the Goods actually supplied to **You**, for example in colour or the fine detail of finishes. TCS does not warrant the accuracy of the depiction of or information pertaining to the Goods published on the website.

All products are hand finished ensuring each piece is distinctively different and possess unique characteristics. Due to these characteristics the colour, texture and finish may vary from piece to piece and from online representations to delivered items. Every effort is made to achieve consistency of colour, texture and finish. This however is not guaranteed and no liability will be accepted by TCS for variations in colour, texture and finish.

TCS recommends that where product care and use information is published online or attached as labels to or delivered with the Goods that **You** carefully review such information before using them to ensure **You** are fully aware of the particular quality of the Goods and any specific care, maintenance or use requirements. TCS will not accept any liability for damage or destruction of the Goods by reason of any failure by **You** to care for, maintain or use the Goods in accordance with that information.

TCS will not accept liability for any loss or damage whatsoever, whether directly, indirectly or consequentially arising from any fault, defect or damage in the Goods caused to **You** or any third party or to his or their property or interests by TCS, its servants or agents.

TCS will not be liable in any circumstances for any technical advice or assistance given or rendered by it to **You** whether or not in connection with the manufacture or construction or supply of Goods for or to **You**.

8. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that TCS owns all intellectual property rights in the website, all links to and parts of the website under the control of TCS, including, but not limited to any images, photographs or text or TCS blogs which appear or are contained on that website. **You** agree that **You** will make no representation to the contrary, and that **You** will not use or copy the website or any of its content in any manner which is inconsistent with the rights of the owner of such intellectual property rights or is likely to harm TCS, its reputation or the website.

All trademarks, logos, text, product getup or style which appear on the website are owned by TCS or its related corporations and **You** acknowledge that fact. **You** must not, except with the express licence of TCS in accordance with its usual terms and conditions associated with its intellectual property, do anything to prejudice the rights of TCS as the owner of such trademarks, logos, text, product getup or style.

9. LIABILITY

You acknowledge that, to the fullest extent permitted by law, having regard for legislative provisions such as the Competition and Consumer Act 2010 (Commonwealth) and similarly enacted State and Territory legislation which impose rights, remedies and obligations which cannot be contractually excluded or restricted that TCS is not making and has not made any warranty or representation as to the suitability of any TCS products or the website for any particular purpose. **You** agree that in using the website and purchasing Goods depicted in it, **You** are not relying on any statement or representation made by TCS which is not expressly contained in this agreement.

Subject to the preservation of any rights attaching to conditions or warranties implied by law as referred to above **You** agree that any liability of TCS arising out of or in connection with any breach of any express or implied warranty or condition in respect of Goods or services supplied to **You** by TCS whether through use of the website or otherwise will, at the election of TCS be limited to:

(a) if the condition or warranty relates to Goods, the replacement or repair of the Goods or the supply of equivalent Goods; and

(b) if the condition or warranty relates to services, the supplying of the services again or the payment of the costs of having the services supplied again.

You agree that the entire risk arising out of installation, downloading, use or performance of any part of the TCS website remains with **You**. To the extent permitted by law, **You** release and discharge TCS from all forms of direct, special, indirect or consequential loss or damage (including loss of profits, loss of data, or loss or damage which may reasonably have been supposed to have been in the contemplation of **You** and TCS as at the date of this agreement) arising out of or in connection with the website or any agreement between **You** and TCS incorporating these Terms and Conditions, including, without limitation, loss or damage caused by the negligence of TCS or its related corporations, servants or agents.

10. USE OF WEBSITE

You agree to take responsibility for the safekeeping of any username and/or password created to facilitate **Your** use of the website. **You** are liable if **Your** username and password are used by an unauthorised person. **You** agree to release and indemnify **TCS** in relation to any liability arising out of the unauthorised use of **Your** username and/or password.

You will not engage in conduct of any kind whatsoever which may or may be designed or intended to damage or interfere with the operation of the **TCS** computer system or website or the computer systems or websites of other users of the website including, but not limited to, by hacking, malicious damage, propagating viruses or worms or by overloading.

11. CHANGES TO TERMS

TCS may add to, delete or otherwise change any of the Terms of this agreement by giving **You** notice as provided in clause 16. **Your** continued custom or use of the **TCS** website after notice will constitute **Your** acceptance of such changes.

You may not change any Terms and Conditions or seek to vary these Terms and Conditions by attaching conditions to **Your** Orders or by any other means unless **TCS** agrees in writing to such change or variation.

12. FORCE MAJEURE

Any failure on the part of **TCS** to perform its obligations under these Terms and Conditions by reason of strikes, riots, fire, explosions, electronic data loss, act of God, war, terrorism, government action or any cause beyond the reasonable control of **TCS** will not result in any liability on the part of **TCS**.

13. PRIVACY AND SECURITY

For details on the **TCS** privacy and security statement, please review the Privacy and Security Statement located on the website or by forwarding a facsimile request to **TCS** on (03) 9576 1177.

14. TERMINATION

TCS may terminate or suspend **Your** use of the website at any time by delivering notice to **You** (specified in clause 16). If this occurs termination of the agreement constituted by **Your** use of the website in accordance with these Terms and Conditions will be effective from the day notice is received or such later date as is specified in the notice and **TCS** will not be liable to **You** for any loss, damage or expenses arising directly or indirectly from termination.

15. NOTICES

Any notice required to be given to **You** by **TCS** may be given to **You** by electronic mail, facsimile or conventional mail to **Your** address contained in the Client Registration form or by notice posted on the website or otherwise notified by **You** to **TCS** in writing. **You** may give notice to **TCS** by electronic mail to sales@townandcountrystyle.com.au or by facsimile to (03) 9576 1177 or by conventional mail.

16. SEVERABILITY

Each of the Terms and Conditions constituting this agreement are severable. Severance does not affect any other provisions.

17. JURISDICTION

The laws of Victoria govern this agreement and any dispute arising out of this agreement which becomes the subject of litigation must be dealt with in the forum of the Courts of the State of Victoria including those relating to Orders originating from or delivered outside Australia. In this respect the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) is specifically excluded.

18. DEFINITIONS

In these conditions:

"agreement" means an agreement between **You** and **TCS** comprising **Your** order and these Terms and Conditions (as amended from time to time) pursuant to which **You** purchase Goods from the catalogue, use the **TCS** website www.townandcountrystyle.com.au or otherwise purchase Goods (whether online or directly) from **TCS**.

"Conditions" means these Terms and Conditions and any agreed variations from time to time notified to **You** in writing.

"Delivery Address" means the address to which the Goods are to be delivered as stated on the Order.

"Delivery Costs" means the costs of delivery of any Goods to **Your** Delivery Address and referred to on the website.

"Goods" includes services and goods displayed or represented on the website and will be deemed to refer to any goods obtained from **TCS** from time to time described in an Order and includes the packaging or get up of those goods.

"GST" means any Goods and Services Tax.

"Intellectual Property Rights" includes all rights in respect of copyright, trademarks, patents, designs, protection of confidential information and photographic and illustrative representations of the Products, whether arising under Statute or otherwise.

"Online" means by way of the website.

"Order" means an order by **You** to purchase goods from **TCS**.

"Product(s)" means any goods represented on the website or otherwise available for purchase from **TCS**.

"price list" means the current list of prices of the **TCS** Goods from time to time published on the website.

"Privacy and Security statement" means the privacy and security statement contained on the website.

"website" and **"TCS website"** means internet website with the URL www.townandcountrystyle.com.au and associated or linked websites conducted by **TCS**.