

1. Definitions

- 1.1 "LMH" means La Marzocco Australasia (LMA) LP T/A La Marzocco Home (LMH), its successors and assigns or any person acting on behalf of and with the authority of La Marzocco Australasia (LMA) LP T/A La Marzocco Home (LMH).
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by LMH to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between LMH and the Customer in accordance with clause 4 below.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, a party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information and pricing details.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and LMH.
- 2.3 Where LMH gives advice, recommendations, information, assistance or service to the Customer, or the Customer's agent, regarding the Goods, it is given in good faith and LMH shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.
- 2.4 All Goods supplied by LMH shall be in accordance with the specifications or descriptions (if any) expressly listed or set out on the face of the quotation or order. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the order.
- 2.5 These terms and conditions are to be read in conjunction with LMH's Website Use of Terms. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW & SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (WA), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 22 of the Electronic Transactions Act 2002 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Price and Payment

- 4.1 At LMH's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by LMH to the Customer; or
 - (b) the Price as at the date of Delivery according to LMH's current price list; or
 - (c) LMH's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 LMH reserves the right to change the Price if a variation to LMH's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to LMH in the cost of taxes, levies, materials and labour or where additional Goods are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, availability of stock, which are only discovered on commencement of the Services) will be charged for on the basis of LMH's quotation and will be shown as variations on the invoice.
- 4.3 Variations will be charged for on the basis of LMH's quotation, and will be detailed in writing, and shown as variations on LMH's invoice. The Customer shall be required to respond to any variation submitted by LMH within ten (10) working days. Failure to do so will entitle LMH to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 4.4 At LMH's sole discretion, a non-refundable deposit may be required.
- 4.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer prior to dispatch of the Goods.
- 4.6 Payment may be made by electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Customer and LMH.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.8 If the Customer owes LMH any money the Customer shall indemnify LMH from and against all costs and disbursements incurred by LMH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, LMH's contract default fee, and bank dishonour fees).
- 4.9 Further to any other rights or remedies LMH may have under this contract, if a Customer has made payment to LMH, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by LMH under this clause 4 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

5. Delivery

- 5.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
 - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at LMH's address; or
 - (b) LMH (or LMH's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 The cost of Delivery is in addition to, the Price.
- 5.3 The Customer must take Delivery, by receipt or collection, whenever the Goods are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then LMH shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 LMH may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

- 5.5 Any time or date given by LMH to the Customer is an estimate only. The Customer must still accept Delivery even if late and LMH will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late. LMH will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then LMH shall be entitled to charge a reasonable fee for redelivery and/or storage
- 6. On-Line Ordering**
- 6.1 The Customer acknowledges and agrees that:
- (a) LMH does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by LMH
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such LMH cannot warrant against delays or errors in transmitting data between the Customer and LMH including orders, and you agree that to the maximum extent permitted by law, LMH will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, LMH shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 6.2 LMH reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of LMH's business, or violated these terms and conditions.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, LMH is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by LMH is sufficient evidence of LMH's rights to receive the insurance proceeds without the need for any person dealing with LMH to make further enquiries.
- 7.3 If the Customer requests LMH to leave Goods outside LMH's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7.4 LMH shall not be held responsible for any damage to the Goods or delays to delivery caused by outside agents. Where the Customer requests LMH to repair such damage then LMH reserves the right to charge the Customer for any costs incurred in rectifying such damage.
- 7.5 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, LMH reserves the right to vary the Price with alternative Goods as per clause 4.2. LMH also reserves the right to halt Delivery until such time as LMH and the Customer agree to such changes.
- 7.6 The Customer acknowledges that LMH is only responsible for parts that are replaced thereby, and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify LMH against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising (including, but not limited to, loss of perishables, flooding and/or damage to materials).
- 8. Title**
- 8.1 LMH and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid LMH all amounts owing to LMH; and
 - (b) the Customer has met all of its other obligations to LMH.
- 8.2 Receipt by LMH of any form of payment other than by electronic/on-line banking and/or credit card shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 8.1, LMH may, at its sole discretion, resell the Goods after providing the Customer with thirty (30) days written notice of its intent to do so.
- 9. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 9.1 The Customer must inspect the Goods on delivery and must immediately notify LMH in writing of any evident/aesthetic defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow LMH to inspect the Goods.
- 9.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 9.3 LMH acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 9.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, LMH makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. LMH's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 9.5 If the Customer is a consumer within the meaning of the CCA, LMH's liability is limited to the extent permitted by section 64A of Schedule 2.
- 9.6 If LMH is required to replace the Goods under this clause or the CCA, but is unable to do so, LMH may refund any money the Customer has paid for the Goods.
- 9.7 If the Customer is not a consumer within the meaning of the CCA, LMH's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by LMH at LMH's sole discretion;
 - (b) limited to any warranty to which LMH is entitled, if LMH did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 9.8 Subject to this clause 9, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
 - (b) LMH has agreed that the Goods are defective; and
 - (c) the Goods are returned within fourteen (14) days at the Customer's cost (if that cost is not significant); and

- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 9.9 Notwithstanding clauses 9.1 to 9.8 but subject to the CCA, LMH shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by LMH;
 - (e) fair wear and tear, any accident, or act of God.
- 9.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by LMH as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that LMH has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 9.10.
- 9.11 Notwithstanding anything contained in this clause if LMH is required by a law to accept a return then LMH will only accept a return on the conditions imposed by that law.

10. Cancellation

- 10.1 LMH may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice LMH shall repay to the Customer any money paid by the Customer for the Goods. LMH shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by LMH as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 10.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

11. Privacy Act 1988

- 11.1 The Customer authorises LMH (or LMH's agent) to access, collect, retain and use any information about the Customer for the purpose of marketing products and services to the Customer.
- 11.2 Where the Customer is an individual the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 1988.
- 11.3 The Customer shall have the right to request (by e-mail) from LMH:
- (a) a copy of the information about the Customer retained by LMH and the right to request that LMH correct any incorrect information; and
 - (b) that LMH does not disclose any personal information about the Customer for the purpose of direct marketing.
- 11.4 LMH will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 11.5 The Customer can make a privacy complaint by contacting LMH via e-mail. LMH will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 11.6 LMH acknowledges that nothing in these terms and conditions purports to modify or exclude its obligations under the Privacy Act 1988.

12. General

- 12.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of either New South Wales or Victoria, the state in which the Goods and/or Services were provided by LMH to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction of the courts will be subject to the state in which LMH has its principal place of business.
- 12.3 Subject to clause 9 LMH shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by LMH of these terms and conditions (alternatively LMH's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 12.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by LMH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 12.5 LMH may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 12.6 The Customer agrees that LMH may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for LMH to provide Goods to the Customer.
- 12.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 12.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.