

## **TRADING TERMS AND CONDITIONS (Ts&Cs)**

- 1) These Ts&Cs are incorporated in the Master Agreement and are paramount to any provisions proposed by the Purchaser to govern the supply of goods by Challen (**Goods**) to the Purchaser (**you**). They form the sole basis for Challen's supply of Goods to you.
- 2) Challen will only accept orders from you by raising an invoice provided by Challen for the Goods (**Invoice**)
- 3) All prices for Goods are as set out in Challen's current price list. You will pay the total price (**Price**) specified in the manner and time stated in the Invoice. Challen may vary any Price in its price list at any time, however, such changes will not apply retrospectively and Challen will use reasonable endeavours to notify you if it makes significant changes to its price list. .
- 4) Title to the Goods in an Invoice shall not pass to you until you pay Challen the Price.
- 5) Challen may revoke or vary your credit limit by providing 30 days written notice to you. If Challen reduces or revokes a credit limit, all amounts owing by you to it in excess of that new limit become immediately due and payable.
- 6) Challen will deliver the Goods to the delivery address given by you.
- 7) It is your responsibility to ensure that the delivery address specified on any order or the Invoice is correct and complete. Orders that are undeliverable due to incorrect or incomplete addresses will be subject to re-delivery costs by you.
- 8) Challen will use reasonable endeavours to supply Goods in accordance with your schedule. However, should supply of the Goods be early or delayed for any reason beyond the control of Challen or as a result of any cause which you is or should reasonably have been aware of, all Loss arising will be your responsibility and you shall indemnify Challen in respect of such Loss.
- 9) You will not hold Challen responsible for any Loss or damage whatsoever as a result of incomplete or incorrect delivery details.
- 10) Cancellation of orders for non-standard product sizes or put up will only be accepted on the basis that you pay all costs incurred in the manufacture up to the date of cancellation.
- 11) Until you acquire title to the Goods, you agree that:
  - a) you have no right or claim to any interest in the Goods to secure any liquidated debt, undiluted debt or obligation Challen owes to them;
  - b) you cannot claim any lien over the Goods;
  - c) you will not create any interest (including a security interest) in the Goods except as agreed with Challen; and
  - d) where you are in actual or constructive possession of the Goods, you hold those Goods as bailee for Challen and owe it the duties and liabilities of a bailor.
- 12) Challen and you agree that:
  - a) pending payment in full for the Goods, you must:
    - (i) not supply any of the Goods to any person outside of its ordinary or usual course of business;
    - (ii) not allow any person to have or acquire any security interest in the Goods;
    - (iii) insure all Goods; and
    - (iv) not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
  - b) If you transfer any of the Goods to a third party before all moneys payable by you have been paid to Challen, you agrees that:
    - (i) you hold the proceeds of transfer on trust and as agent for Challen;
    - (ii) immediately on receipt of those proceeds, you must pay them to Challen or into an account with a bank or financial institution of deposit taking institution as trustee for Challen;
    - (iii) where you are not paid by a third party for the re-supply of Goods, you (at the request of Challen) must assign that right to be paid to Challen;
    - (iv) any accessory or item which is added to or mixed with any of the Goods becomes and remains the property of Challen until Challen is paid; and
    - (v) if you fail to pay for the Goods within the period of credit granted by Challen, it may recover possession of the Goods at any site owned, possessed or controlled by you and you agree that Challen has an irrevocable license to do so.
  - c) Notwithstanding the provisions above, Challen is entitled to maintain an action against you for the Price and the risk of the Goods shall pass to you upon delivery.
- 13) Upon delivery of the Goods, you must immediately inspect them for any damage or shortage.
- 14) If after accepting delivery you notice damage to the Goods you must notify Challen within 3 days of noticing the damage by contacting Challen and such notice must be accompanied by high resolution photographs. . You must notify Challen of any or short shipment within 3 days of proof of delivery by contacting Challen. To the extent permitted by law, Challen reserves the right to reject short shipment or damaged stock related claims submitted more than 3 Business Days after proof of delivery.
- 15) Challen reserves the right to inspect the Goods and to seek its own assessment of any claim for damage, defect or shortage.
- 16) Any application by you to return Goods supplied must be accompanied by the original Invoice and the Goods must be in resellable condition. Challen may accept the return of any Goods supplied to you at its sole and unfettered discretion. A handling charge may be applied to Goods returned to cover reasonable administration and restocking costs.
- 17) To the extent permitted by law, no claims in respect of any Goods will be recognised unless made within 7 days from their date of delivery.
- 18) Where you return any of the Goods to Challen, you shall use the carrier nominated by Challen at your cost and expense.
- 19) Challen will not be liable for failure to ship or deliver or delay in shipment or delivery due to unavailability of freight or shipping space, prohibitions or restrictions under any law or by any Government or any official or statutory authority, wreck, riot, pandemic or epidemic (or associated government directive), fire, flood, strike, embargo, war, hostilities between any powers, civil commotion, breakdown of machinery, failure or delay in delivery or shipment on the part of the manufacturers, merchants, agents, delay in

transportation or due to any cause whatsoever and whether of a similar nature (or not) beyond Challen's control, and in the event of delay in shipment or delivery so caused the time for shipment and/or delivery shall be extended for such reasonable period after such cause or causes have ceased to operate as shall enable it to ship and/or deliver and you shall be bound on the date specified to accept the Goods and pay the price notwithstanding such delay. However, Challen will do every reasonable thing in its power to avoid or shorten delays.

20) The Goods are at your risk from their delivery. You will insure the Goods against fire, theft and such other risks as reasonably required (or Challen may require) in the joint names of you and Challen until property in the Goods passes and shall produce to Challen such proof of insurance as Challen may require upon demand. The amount of the cover shall not be less than the Price and in the event of a claim arising under the policy while any amount remains due to Challen in respect of the Goods, Challen shall be solely entitled to receive moneys due under the policy and may apply all moneys received by it in reduction of the amount due to it.

21) If you:

- a) fail to pay for the Goods in accordance with these Ts&Cs;
- b) exceed any credit limit granted to you by Challen;
- c) being a natural person, are declared or commits an act of bankruptcy, enters into an arrangement or composition with your creditors, sign an authority under Part IX or X of the Bankruptcy Act or any execution is levied against your property; or
- d) being a corporation, are subject to the appointment of a controller, winding up proceedings or any execution is levied against your property.

in addition to its other rights, Challen may:

- e) withhold delivery of any Goods which are the subject of any to be delivered Invoice;
- f) cancel or suspend any future unsatisfied part of the Invoice and any other Challen invoice;
- g) treat any Invoice or order by you as having been repudiated by you; and
- h) treat the amount owing under any Invoice as a debt immediately payable,

provided that nothing specified in the agreement shall release you from your obligations to take delivery of and to pay for the Goods.

22) These Ts&Cs contain the whole of the agreement between Challen and you and you acknowledge that no person (whether servant or agent of Challen or otherwise) has made or given any guarantee, representation, statement or warranty whether verbally or otherwise which may have induced you to enter into this agreement and you will not make any claim on Challen in respect of any liability purportedly flowing from the breach or non-observance of such guarantee representation, statement or warranty.

23) To the fullest extent permitted by law, Challen excludes all liability (whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise) for any claim, loss, damage or other liability of whatsoever nature suffered by you as a result of any act as a result of any act, omission or statement made by Challen, its employees, contractors or agents whether negligent or not, except that nothing in these Ts&Cs limits any liability imposed by any statute unless or to the extent that it is lawful to do so.

24) Notwithstanding any other provision of these Ts&Cs, the total cumulative liability of Challen to you for all loss suffered or incurred by you for all claims arising out of or in connection with these Ts&Cs, whether arising in contract (including under any warranty or indemnity), tort (including negligence), in equity, in restitution or pursuant to statute, is limited, in aggregate total, to the amount actually paid to Challen by you in the 12 months preceding the most recent claim determined by reference to the date the claim arose.

25) Your total liability to Challen, except in relation to the recovery of sums due under or in connection with these Ts&Cs, is limited to the amount paid to Challen by you in the 12 months preceding a claim being made.

26) Where an invoice is conditional on your approval of a sample provided by Challen there is no express or implied understanding that the Goods will be exactly the same as the sample, although Challen will use its best endeavours to ensure the Goods supplied are similar to that of the sample.

27) At the request of Challen, a corporation Purchaser will procure all of their Directors to provide joint and several guarantees of the performance by you of your obligations to Challen in a form required by Challen.

28) All contracts and agreements for the sale of Goods is deemed to have been made in Victoria and you acknowledge that any dispute arising between the parties shall be solely heard in and be governed by the laws of Victoria.

29) All Invoices are payable within 30 days of statement, unless otherwise agreed with Challen. Challen reserves the right to charge you interest on amounts not paid within the specified credit period at a rate equivalent to the reference rate charged by Challen's principal bankers, from invoice date until payment of the overdue debt. You agree that Challen is entitled to charge all costs associated with debt collection on an indemnity basis.

30) Returns for credit will only be accepted if prior written approval is given by Challen and the Goods are returned freight pre-paid and in original condition. Challen reserves the right to charge a restocking fee if Goods are not returned in perfect condition.

31) Challen reserves the right to suspend supply to you without notice, if these Ts&Cs are breached (in Challen's reasonable opinion).

32) Challen may give information about you to a credit reporting agency for the following purposes to:

- a) obtain a consumer credit report about you and/or its directors; and/or
- b) allow the credit reporting agency to create or maintain a credit information file containing information about you. The information given is limited to certain specified information. If you require more detail, please contact Challen.

33) You agree that Challen may obtain and use credit information about your credit worthiness for the purposes of assessing the application credit. By providing that information, you authorise the listed credit referees to provide Challen with information about your credit worthiness.

34) You acknowledge and agree that words defined in the *Personal Property Securities Act 2009 (PPSA)* have the same meaning in this document and by accepting these Ts&Cs:

- a) you grant to Challen a purchase money security interest (**PMSI**) in the Goods and their proceeds of the sale;
- b) until title in the Goods passes to you, you will keep them free of any lien or security interest and not deal with them in a way that will or may prejudice any rights of Challen; and
- c) in addition to any other rights under these Ts&Cs, Challen may exercise any and all remedies afforded to it under the PPSA including, without limitation, entry into any building or premises owned, occupied or used by you, to search for and seize, dispose of or retain Goods.
- d) you undertake to:

- i) sign any further documents and provide such information which Challen may reasonably require to register, amend or update a registration arising under the PPSA;
  - ii) indemnify and upon demand reimburse Challen for all expenses incurred in respect of any such registration;
  - iii) not register or permit to be registered a registration in the Goods without the prior written consent of Challen; and
  - iv) provide Challen, not less than 7 days, prior written notice of any proposed change in your name, address, contact numbers or business practices.
- e) To the maximum extent permitted by the PPSA, Challen and you agree that any requirement of the PPSA that may be excluded or waived by agreement is excluded.
- 35) You may advertise on your primary website (or the website readily associated with your name) (**Branded Website**) that you are an authorized dealer but must not offer for sale any Sony, Kicker, Eton or JL Audio Goods or any other future brands distributed by Challen over the internet (including, without limitation, on eBay, Gumtree, Catch, and any other online trading or auction website), without Challen's prior written consent (which may be withheld at its sole discretion). In particular:
- a) where online trading is permitted it must be done using your existing trading name and Branded Website;
  - b) all online/digital materials including logo, images, intellectual property and web banners will need to be approved by Challen;
  - c) you acknowledge that this policy is necessary to safeguard the goodwill and reputation of the Challen business and that of the nominated brands.
- 36) If you retail Sony car audio products (**SonyGoods**) sourced from Challen, you:
- a) are required to provide within the first 7 days of each calendar month-end a schedule of your sales of SonyGoods for that month (**Schedule**);
  - b) may make a claim for a rebate (if applicable) from Challen in respect of the SonyGoods sold supported by the relevant Schedule (**Rebate**);
  - c) must ensure that you retain records to demonstrate your entitlement to Rebate (**Records**);
  - d) must make available for review and copy by Challen (or its officers or agents) the Records (and where digitally held, make access to your relevant systems which store the Records available, or provide hard copy documentation);
  - e) participate in any audit of those Records reasonably required by Challen and promptly meet the costs of that audit if any discrepancy is identified and repay to Challen the amount of that discrepancy; and
  - f) permit offset of any amount overpaid to you in respect of Rebate and audit costs from any amount owing to you.
- 37) You agree that Challen may terminate, effective immediately by notice, your agreement with Challen in respect of prospective obligations if you breach any of the provisions of clauses 35 and 36.
- 38) Any provision of these Ts&Cs which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. The severance of the prohibited or unenforceable part will not invalidate the remaining provisions of these Ts&Cs nor affect the validity or enforceability of the severed term or part term in any other jurisdiction.
- 39) You must not assign a right or novate an obligation arising under these Ts&Cs without first obtaining Challen's prior written consent, which must not be unreasonably withheld.
- 40) Unless the contrary intention appears, any published or advertised Price and/or Invoice is exclusive of GST.
- 41) Words defined in A New Tax System (Goods and Works Tax) Act 1999 (Cth) have the same meaning in this agreement.
- 42) If GST has any application to any supply made under or in connection with these Ts&Cs, Challen may in addition to any amount or consideration expressed as payable elsewhere in this agreement, recover from you an additional amount on account of GST, calculated by multiplying the amount or consideration payable by you for the relevant supply by the prevailing GST rate.
- 43) Any additional amount on account of GST recoverable from you will be calculated without any deduction or set-off of any amount, and is payable by you at the same time and in the same manner as paying the amount or consideration for the relevant supply.
- 44) Challen must promptly issue to you a tax invoice and any agreed adjustment note.