

# BOXFISH RESEARCH LIMITED

## TERMS OF SALE

### 1 APPLICATION OF TERMS

1.1 These Terms apply to any order for, or purchase of, Products from Boxfish Research Limited (Boxfish Research). By ordering or purchasing Products from Boxfish Research:

- a you agree to these Terms; and
- b where you order or purchase Products on behalf of, another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

1.2 If you do not agree to these Terms, you are not authorised to order, purchase (or attempt to order or purchase) Products from Boxfish Research, and you must immediately stop doing so.

### 2 CHANGES

2.1 We may change these Terms at any time. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. By ordering or purchasing Products from Boxfish Research you agree to be bound by the changed Terms.

### 3 DEFINITIONS

In these Terms:

*Documentation* means the user and technical documentation for the Product available on our Website or otherwise provided by us

*GST* means New Zealand goods and services tax

*including* and similar words do not imply any limit

*Loss* includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis

*Personal information* means information about an identifiable, living person

*Product* means any product advertised or purchased from us

*Terms* means these terms and conditions titled *Website Terms of Use and Terms of Sale*

*Third Party Charges* means any fees charged by third parties in relation to your transaction, including any taxes, duties or other liabilities imposed by any governmental agency (including any customs duty), credit card transaction fees and foreign currency conversion fees

*Underlying System* means any network, system, software, data or material that underlies or is connected to the Website

*User ID* means a unique name and/or password allocated to you to allow you to access certain parts of the Website

*We, us or our* means Boxfish Research Limited *Website* means <https://www.boxfish.nz>

*You* means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting

#### **4 YOUR GENERAL OBLIGATIONS**

4.1 You must provide true, current and complete information in your dealings with us (including when setting up an account), and must promptly update that information as required so that the information remains true, current and complete.

4.2 If you are given a User ID, you must keep your User ID secure and:

1. a not permit any other person to use your User ID, including not disclosing or providing it to any other person; and
2. b immediately notify us if you become aware of any unauthorised use or disclosure of your User ID, by sending an email to [info@boxfish.nz](mailto:info@boxfish.nz) .

4.3 When using our website you must:

3. a not act in a way, or use or introduce anything (including any virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Website or any Underlying System, or otherwise attempt to damage or interfere with the Website or any Underlying System; and
4. b unless with our agreement, access the Website via standard web browsers only and not by any other method. Other methods include scraping, deep-linking, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering, extraction or monitoring method.

4.4 You must obtain our written permission to establish a link to our Website. If you wish to do so, email your request to [info@boxfish.nz](mailto:info@boxfish.nz) .

4.5 You indemnify us against all Loss we suffer or incur as a direct or indirect result of your failure to comply with these Terms, including any failure of a person who accesses and uses our Website by using your User ID.

## 5 ORDERS

5.1 When you place an order for Products from us:

1. you confirm that:
  1. you are aged 18 years or over;
  2. you are legally entitled to purchase those Products; and
  3. you are bound by these Terms in relation to that order, subject to our acceptance of that order;
2. you are making an offer to buy the Products, and we are not bound by that order until we have accepted it;
3. our acceptance of your order occurs when we issue you a confirmation email of receipt of your order; and
4. you may not cancel or alter any order that we have accepted, in whole or in part, without our prior written consent.

5.2 We reserve the right to accept or reject your order in whole or in part, or to cancel any order that we have accepted in whole or in part at any time prior to shipment of the Products, for any reason including, without limitation, the unavailability of any Products, an error in the price or the description of Products on the Website, an error in your order, or us not receiving payment in full. Where we cancel an order in whole or in part after we have accepted it, we will notify you of the cancellation by email and will refund your payment in accordance with clause 7.4a but will have no other obligations to you in respect of the order (or the cancelled part of the order, as applicable).

## 6 DELIVERY

6.1 Any time stated for delivery is an estimate only. We are not liable to you or any other person for any failure to meet a stated time for delivery and any such failure does not affect your obligation to pay for the Products.

6.2 If you request us to deliver the Products to another person, or if a person other than you takes possession of the Products at your requested delivery address, that person takes possession of the Products as your agent and you remain fully liable to us under these Terms despite delivery to that other person.

6.3 Risk in the Products passes to you when we deliver the Products to your designated delivery address in accordance with these Terms (whether or not you take delivery). If the Products are lost or damaged in transit, please contact us at [info@boxfish.nz](mailto:info@boxfish.nz). We will use this delivery information to make a claim against our courier company. We will offer you the choice of a replacement or a refund, once we

have received confirmation from our courier company that delivery was not successful.

6.4 Title in the Products passes to you on the later of delivery or payment in full.

## **7 PRICES AND PAYMENT**

7.1 On placing an order for Products, you must pay:

- a the price, shipping and handling charges for those Products; and
- b GST on any taxable supplies; and
- c any applicable Third Party Charges.

7.2 Payment of Third Party Charges will be made by you to the associated third party or parties, unless we explicitly agree to collect and pay the third party charges on your behalf.

7.3 We accept payment via bank or Paypal transfer only, unless we agree to provide you with a credit account.

7.4 We will refund to you an amount that you have paid to us, other than any Third Party Charges, only:

- a where we have received payment from you in relation to an order (or part of an order) that we do not accept or that we cancel;
- b as set out in clause 10.5; or
- c as required by law.

We will remit any amounts payable by us to you by crediting the account from which your payment was made.

7.5 We may recover from you all Loss incurred by us as a result of your failure:

- a to take delivery when the Goods are made available to you, including any storage costs; or
- b to pay any amount payable by you under these Terms, including any costs of debt recovery.

## 8 CREDIT ACCOUNT

8.1 We may, at our discretion, allow trade buyers to establish a credit account with us. The terms in this clause 8 will apply to such an account.

8.2 We may use any information you have supplied to us to:

- a carry out credit checks of you;
- b bill you and to collect money that you owe us;
- c enforce our rights under these Terms; and
- d take any other reasonable action in connection with assessing your application for credit and/or giving effect to these Terms.

8.3 Invoices are payable by the 20th of the month following the date of our invoice electronically in cleared funds or as otherwise arranged with us. Invoices are normally issued on the date of shipment.

8.4 We may, with effect from the date that we advise you of the following:

- a require immediate payment or alter the terms of payment; and/or
- b impose a credit limit on your account.

8.5 If payment in full is not received by the due date for payment, we may charge interest at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our bank plus 2% per annum from the due date until actual date of payment.

8.6 If:

- a any information you give us is misleading, false or materially incomplete;
- b you default in any payment due to us;
- c you breach any other obligation owed to us;
- d you become insolvent, liquidated or bankrupt, or subject to any form of insolvency action or external administration, or cease business for any reason; or
- e we become aware of information that causes us to believe that any of the above may occur,

then, in addition to any other right we have:

- f all payments owed by you to us will immediately become due and payable;
- g we may cancel or suspend the supply of any Products to you; and/or
- h we may terminate your credit account on notice to you.

8.7 We may recover from you any costs or damages (including legal costs and debt collection costs) incurred by us in recovering Products or any payment due by you.

8.8 You agree that the supply of any Product to you on credit terms creates a security interest over that Product, and all of your present and future rights in relation to the Product and any proceeds, in our favour that may be registered on the personal property securities register under the Personal Properties Securities Act 1999.

## **9 INTELLECTUAL PROPERTY**

9.1 We (and our licensors) own all proprietary and intellectual property rights in the Products, the Documentation, the Website (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos and look and feel) and the Underlying Systems.

9.2 You must not copy, reproduce, adapt, translate, reverse-engineer or make derivative works from the whole or any part of:

- a the Products, their underlying designs or technology or the Documentation; or
- b the Website or the Underlying Systems.

## **10 WARRANTIES**

10.1 We warrant that:

During a period of 24 months from the date of delivery, the Products will:

- i comply with the applicable Documentation in all material respects; and
- ii be free from defects in material, workmanship, and design.

10.2 The warranties in clause 10.1 do not apply to any Product:

- a from which the serial number has been removed or defaced;
- b where the seals have been broken, tampered with or installed incorrectly (other than by us);

c that has become defective as a result of:

i accident, misuse, abuse, damage caused by sand, dirt, water, liquid, impact or battery corrosion or other external causes;

ii corrosion caused by exposure to the environment or chemicals;

iii failure to follow the usage instructions for the Product in the Documentation (including by being operated outside the usage parameters stated in the Documentation);

iv failure to follow the servicing guidelines for the Product in the Documentation;

v use with parts not manufactured or sold by us; or

vi modification or service by anyone other than us or our authorised service agents; or

10.3 The warranties in clause 10.1 do not cover accessories not manufactured by us or batteries.

10.4 You warrant and represent that you are acquiring the Products for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Products.

10.5 If a Product does not meet the warranties in clause 10.1, we will, at our cost and option, repair or replace (which may be with a reconditioned unit of like condition), or refund or offer to you a reduction in the price that you have paid to us for, any Products that do not meet:

10.6 Any repair, replacement or refund under clause 10.5 is conditional on you returning the Products to us.

10.7 Where you reasonably believe that you have purchased any Product that is defective, or you have received an incorrect Product please contact us at [info@boxfish.nz](mailto:info@boxfish.nz) and we will arrange with you the process for:

a returning the Products to us; and/or

b determining if the Products are defective; and/or

c providing you with any remedy to which you may be entitled.

## 11 DISCLAIMERS

11.1 To the extent permitted by law, we and our licensors have no liability or responsibility to you or any other person for any Loss in connection with:

- a any Product being unavailable;
- b the Website being unavailable (in whole or in part) or performing slowly;
- c any error in, or omission from, any information made available through the Website;
- d any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Website. To avoid doubt, you are responsible for ensuring the process by which you access and use the Website protects you from this; and
- e any site linked from the Website. Any link on the Website to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

11.2 We make no representation or warranty that the Products, your purchase of the Products, any use of the Products or the Website are legal or appropriate in all countries, that the Website available for use in all countries or that the content of the Website (including, without limitation, the instructional materials on the Website) satisfies the laws of all countries. You are responsible for ensuring that your purchase, importation and use of the Products and your access to and use of the Website is not illegal or prohibited, and for your own compliance with applicable local laws.

## 12 LIABILITY

12.1 Except as set out in clause 10, to the maximum extent permitted by law:

- a you purchase and use the Products and access and use the Website at your own risk; and
- b we are not liable or responsible to you or any other person for any Loss in connection with the Products, your use of the Products, these Terms, the Website, or your access and use of (or inability to access or use) the Website. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

12.2 Except to the extent permitted by law, nothing in these Terms has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer



protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited:

- a our liability for claims relating to the Products is limited to the purchase price paid by you for the Products; and

- b our liability for all other claims is limited to NZD100.

12.3 To the maximum extent permitted by law and only to the extent clauses 12.1 and 12.2 do not apply or do not limit or exclude any liability:

- a our total liability to you in connection with claims relating to the Products must not exceed the purchase price paid by you for the Products;

- b our total liability to you for all other claims under or in connection with these Terms, or in connection with the Website, or your access and use of (or inability to access or use) the Website, must not exceed NZD100; and

- c we are not liable to you for any:

- i loss of profit, revenue, savings, business and/or goodwill; or

- ii consequential, indirect, incidental or special damage or loss of any kind.

## 13 PRIVACY POLICY

13.1 You are not required to provide personal information to us, although in some cases if you choose not to do so then we will be unable to make certain sections of the Website available to you. For example, we may need to have your contact information in order to deliver Products to you or to provide you with updates about our Products or our Website.

13.2 When you provide personal information to us, we will comply with the New Zealand Privacy Act 1993.

13.3 The personal information you provide to us (including any information provided if you register for an account) is collected and may be used for communicating with you, statistical analysis, the marketing and supply by us of the Products to you, credit checks (if necessary), and research and development.

13.4 We may also collect technical information whenever you log on to, or visit the public version of, our Website. This may include information about the way users arrive at, browse through and interact with our Website. We may collect this type of technical information through the use of *cookies* and other means. *Cookies* are alphanumeric identifiers that we transfer to your computer's hard drive to enable our systems to recognise your browser. If you want to disable *cookies*, you may do so by changing the settings on your browser.

However, if you do so, you may not be able to use all of the functions on the Website. We use the technical information we collect to have a better understanding of the way people use our Website, to improve the way it works and to personalise it to be more relevant and useful to your particular needs. We may also use this information to assist in making any advertising we display on the Website more personalised and applicable to your interests.

13.5 Generally, we do not disclose personal information to third parties for them to use for their own purposes. However, some of the circumstances in which we may do this are:

- a to service providers and other persons working with us to make the Website available or improve or develop its functionality (e.g. we may use a third party supplier to host the Website);
- b to service providers working with us to deliver the Products (e.g. we will generally use a third party courier company to deliver the Products);
- c in relation to the proposed purchase or acquisition of our business or assets; or
- d where required by applicable law or any court, or in response to a legitimate request by a law enforcement agency.

13.6 Any personal information you provide to us may be stored on the secure servers of our trusted service providers, which may be located outside New Zealand. This may involve the transfer of your personal information to countries which have less legal protection for personal information than New Zealand.

13.7 You have the right to request access to and correction of any of the personal information we hold about you. If you would like to exercise these rights, please email us at [info@boxfish.nz](mailto:info@boxfish.nz).

## **14 SUSPENSION AND TERMINATION**

14.1 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the Website (or any part of it).

14.2 On suspension or termination, you must immediately cease using the Website and must not attempt to gain further access.

## **15 GENERAL**

15.1 If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.

15.2 These Terms, and any dispute relating to these Terms or the Products or Website, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Products or Website.

15.3 A reference to you or us includes a reference to that party's executors, administrators, successors and permitted assigns.

15.4 For us to waive a right under these Terms, the waiver must be in writing.

15.5 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 4.5, 8, 10, 11, 12 and 15.1, continue in force.

15.6 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

15.7 These Terms set out everything agreed by the parties relating to your use of the Website and the supply of the Products and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Products or the Website that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.