

Terms and Conditions of Sale (2021)

*This document together with all attachments defines the terms and conditions (the **Terms and Conditions**) on which Distinctive Golf, Distinctive Products or distinctive products golf (as the case may be) supplies any of the products (each a **Product**) listed in Our brochures, catalogue or on the website www.distinctiveproducts.com.au (the **Site**) to you. Please read these Terms and Conditions carefully before ordering any Products as, by ordering such Products from Us, you agree to be bound by them.*

1. Introduction

- 1.1. These Terms and Conditions govern the supply by Distinctive Golf, Distinctive Products or distinctive products golf (as the case may be) of any Product ordered by you.
- 1.2. By placing an Order, you agree to be bound by these Terms and Conditions.
- 1.3. In these Terms and Conditions:
 - 1.3.1. **Account** means the account that may be set up either by Our Site administrator or you to manage any Orders you may make;
 - 1.3.2. **Business Day** means a day which is neither (i) a Saturday or Sunday, nor (ii) a public holiday anywhere in Australia;
 - 1.3.3. **Confirm** has the meaning given it in clause 4.7. **Confirmation** and **Confirmed** have corresponding meanings;
 - 1.3.4. **Contract** means the contract formed between you and Us when We accept an Order from you in accordance with clause 4.8 below;
 - 1.3.5. **Customer** means any individual or corporation (including you) who places an Order;
 - 1.3.6. **Order** means any order submitted to Us to purchase a Product;
 - 1.3.7. **We** means (as the case requires) Distinctive Golf, Distinctive Products or distinctive products golf, all being trading names of Klaus Peter Krohn, ABN 46 588 391 257, with the registered business address of 20 Silvan Road, Wattle Glen, Victoria 3096 Australia. **Us** and **Our** have corresponding meanings;
 - 1.3.8. references to **clauses** are to clauses of these Terms and Conditions;
 - 1.3.9. headings are for ease of reference only and shall not affect the interpretation or construction of the Terms and Conditions;
 - 1.3.10. words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include every gender and references to

persons shall include an individual, company, corporation, firm or partnership;

1.3.11. references to **includes** or **including** or like words or expressions shall mean without limitation.

2. Valid Orders

2.1. To place a valid Order, you must be over 18 years of age and be able to legally transact via Direct Debit, PayPal or a valid credit or debit card acceptable to Us.

2.2. If you propose to resell or resupply any Product, by placing an Order you agree that such Product will be made available for resale or resupply only:

2.2.1. at an authorised location, being the location specified in the Order; and

2.2.2. to customers who you reasonably expect will use it for their personal use,

unless you have first obtained Our written consent (which may be granted or withheld in Our absolute discretion). Resale or resupply of Product at any other location, including online, or to commercial customers is strictly prohibited absent such consent.

2.3. You agree that We may undertake spot checks from time to time to ensure your compliance with clause 2.2. If We have a reasonable suspicion that you are not complying with clause 2.2, We may suspend any Orders which have yet to be Confirmed and We may refuse to Confirm any future Orders from you.

3. Relationship between Terms and Conditions and General Law

3.1. These Terms and Conditions apply to all Orders and Contracts involving you. Nothing in these Terms and Conditions affects your statutory rights (including any rights arising under the Australian Consumer Law).

3.2. These Terms and Conditions prevail over any other terms of supply put forward by you. Any conditions that you submit, propose or specify in whatever form and at whatever time are expressly waived and excluded.

3.3. No other terms or changes to the Terms and Conditions are binding unless agreed to in writing and signed by Us.

4. Order Procedure

4.1. An Order can be made by email, fax, SMS, in writing or via the Site. If making an Order via the Site, you must register for an Account on the Site and follow all relevant instructions on the Site.

4.2. Orders received by Us other than via the Site will be dealt with manually. All and any changes must be advised in writing to Us to be accepted as valid changes to any manual Order received.

- 4.3. Irrespective of any previous prices quoted or available on the Site, once you select a Product that you wish to Order, you will then be shown or told (on the Site) all and any additional charges you must pay including GST, if applicable, and any applicable delivery charges. Unless otherwise stipulated all charges are in Australian currency. Subject to clause 4.11 below, this is the total of any purchases made and what is required to be paid for receipt of the ordered Product.
- 4.4. The Products must be paid for in full prior to shipment unless other arrangements have been made with Us. We accept direct debits to the business bank account or payments via PayPal, credit cards or debit cards. Without prior payment or approved payment options, your Order will not be accepted. Depending on the results of a credit check, We reserve the right not to accept certain forms of payment and to refer you to other forms of payment.
- 4.5. You undertake that all details you provide to Us in making any Order will be correct, and further that the credit or debit card, or account or other payment method which you use is either your own or company or business approved and that there are sufficient funds or credit facilities to cover the cost of the Product the subject of the Order. We reserve the right to obtain validation of your payment details before Confirming an Order.
- 4.6. When you submit an Order to Us you agree that you do so subject to these Terms and Conditions current at the date you submit your Order. You are responsible for reviewing the latest Terms and Conditions each time you submit an Order.
- 4.7. Your Order remains an offer until such time as We Confirm it as follows:
 - 4.7.1. in the case of an Order made via the Site, by sending you (via email or other means) a written statement to the effect that We accept or confirm your Order; or
 - 4.7.2. in all other cases, by dispatching to you the Product(s) requested pursuant to the Order in question.
- 4.8. We are not obliged to supply any Product to you until an Order is Confirmed. Unless We expressly state that We accept or confirm your Order, any acknowledgement of your Order by Us is purely for information purposes and does not constitute Confirmation.
- 4.9. Once an Order is Confirmed, a Contract is formed and We are legally bound to supply to Product to you. Without affecting any obligation you may have to pay Us earlier, We may send an invoice to you at any time after We have Confirmed your Order. Until We Confirm an Order, We reserve the right to decline your Order for any reason, including unavailability of supplies or We may offer you an alternative Product (in which case We may ask you to re-submit a new or revised Order). Likewise, until We Confirm an Order, you retain the right to cancel or revise your Order. If you or We decide to reject or withdraw an Order,

then We will promptly refund any payment already made by you in respect of that Order.

- 4.10. If you discover that you have made a mistake with your Order after a Contract has been formed, please contact Us immediately. We will endeavor to correct the mistake to the best of Our ability, however We cannot guarantee that We will be able to amend your Order in accordance with your request.
- 4.11. We will endeavor to ensure that the price given to you is accurate, but the price of your Order will need to be validated by Us as part of Our Confirmation process. If the price for the Order changes before We Confirm an Order, We will contact you to ensure that you wish to proceed at the amended price.
- 4.12. A Contract will relate only to those Products which have been dispatched (or otherwise Confirmed), even where the relevant Order is for additional Products. We will not be obliged to supply any additional Products which may have been part of your Order until We have Confirmed the Order in respect of those additional Products.
- 4.13. Title for the Products does not pass to you until We have received cleared funds for the Product. This clause applies to all Customers, regardless of Our agreed credit terms. Risk of loss or damage to the Products passes to you on dispatch.
- 4.14. There may be a late fee if any payment is received outside Our agreed trading terms. We are entitled to charge interest on any overdue amount at a rate of 1.5% per calendar month. You also agree to pay all fees, collection costs, and legal fees incurred in the collection of any outstanding amounts.
- 4.15. You must only submit to Us information which is accurate and not misleading and you must keep it up to date and inform Us of any relevant changes.

5. Delivery

- 5.1. Every effort will be made to deliver the Product to you at the place of delivery requested by you in your Order.
- 5.2. We aim to deliver within the time indicated by Us at the time of your Order (which may be revised from time to time) however We cannot promise an exact date and will not be responsible for any delays. Dependent on stock and where the delivery is being sent, We will aim to dispatch the product between 2-3 Business Days from either cleared funds or agreed terms.
- 5.3. Should any hold up occur We will inform you of any new estimated delivery date, but, to the extent permitted by the law, We shall not be liable to you for any losses, liabilities, costs, damages, charges or expenses arising out of late delivery.
- 5.4. On delivery of the Product, you may be required to sign for delivery. You agree to inspect the Product for any obvious faults, defects or damage before you sign

for delivery. You need to keep a receipt of the delivered Product in case of future discussions with Us.

- 5.5. We may not be able to deliver to some locations. If this is the case, We will inform you using the contact details that you provide to Us and you can elect to cancel the Order or request delivery to an alternate address.
- 5.6. The Product can be sent in a number of different packages to you (box, envelope, bag etc) and is dependent on the type of product ordered and quantity. Any special packaging requests by you are subject to additional charges. We will advise of all freight costs prior to dispatch and these are an extra charge payable by you.
- 5.7. You must take care when opening the Product so as not to damage it, particularly when using sharp instruments.
- 5.8. If you are not available to accept delivery or arrange for collection, please advise Us to arrange alternate delivery. Alternatively, where a third party carrier is used, they may leave details of where the Product can be collected.
- 5.9. If delivery or collection is delayed through your unreasonable refusal to accept delivery or if you do not (within two weeks of Our first attempt to deliver the Product to you) accept delivery or collect the Product from the carrier, then We may (without affecting any other right or remedy available to Us) do either or both of the following:
 - 5.9.1. charge you for Our reasonable storage fee and other costs incurred by Us; or
 - 5.9.2. no longer make the Product available for delivery or collection and notify you that We are immediately cancelling the applicable Contract, in which case We will refund to you any money already paid to Us under an existing order/contract, less a reasonable administration charge (including for attempting to deliver then returning the Product, and any storage fees as provided in clause 5.9.1 above).
- 5.10. It is your responsibility to ensure that the Products are sufficient and suitable for your purposes and meet your individual requirements. We do not warrant that the Products will meet your individual requirements. You acknowledge that Products are standard and not adapted to any particular requirements that you may have unless specifically ordered and agreed to.
- 5.11. Claims for shortages, damages etc will only be recognised if made in writing and forwarded to Us within 5 Business Days of the delivery of the product. In the case of any overpayment this will need to be notified within 5 Business Days of invoice.

6. Cancellation

- 6.1. We may cancel a Contract if the Product is not available for any reason. We will notify you if this is the case and return any payment you have made.
- 6.2. We will usually refund any money received from you using the same method originally used by you to pay for the Product.
- 6.3. If you wish to cancel an Order which has not been Confirmed, please do so by emailing to peter@distinctiveproducts.com.au.
- 6.4. If you wish to cancel a Contract, please do so by emailing a brief explanation to peter@distinctiveproducts.com.au. If We have yet to dispatch the Product, We will accept your cancellation without any fees. If the Product has been dispatched, then the Contract will remain on foot.

7. Warranty of Products

- 7.1. We warrant that:
 - 7.1.1. the Product will be delivered in the quantities ordered; and
 - 7.1.2. the Product will conform with the manufacturer's latest published instructions as set out on the Site, the manufacturer's site or in Our product material at the time of your Order.
- 7.2. The Product is intended to be used strictly in accordance with the manufacturer's latest published instructions as set out on the Site, the manufacturer's site or the Product itself. It is your responsibility to ensure that you use the Product strictly in accordance with those instructions.
- 7.3. Before delivery, We may make minor adjustments to material, colour, weight, measurements, design and other features to the extent that they are reasonable.
- 7.4. If, upon receipt, you tell Us that the Product is faulty, you agree to keep the Product in its current condition available for Us (or Our agent) to inspect within a reasonable time.
- 7.5. In order to provide you with any remedies for a faulty Product, We may need your assistance and prompt provision of certain information regarding the Product, including:
 - 7.5.1. a detailed description of the way in which it is alleged that the Product is damaged or defective; and
 - 7.5.2. the delivery note number; and
 - 7.5.3. such other information as We reasonably require.
- 7.6. If you claim a Product is faulty, and We find that the Product has:
 - 7.6.1. been misused, abused or subjected to neglect, improper or inadequate care, carelessness, damage or abnormal conditions; or

- 7.6.2. been involved in any accident or damage caused by incorrect attempt at modification or repair; or
 - 7.6.3. been dealt with or used contrary to Our or the manufacturer's instructions for the Product; or
 - 7.6.4. deteriorated through normal wear and tear,
- after delivery by Us, We may at Our discretion decide not to repair, replace or refund you for the Product and/or We may require you to pay all reasonable carriage costs and servicing costs at Our current standard fees and costs.

8. Redemption of Promotional Vouchers

- 8.1. From time to time We may issue promotional vouchers that may be used to purchase any Product sold by Us. These vouchers can be redeemed within the use-by dates and on any Product.
- 8.2. The following conditions for the redemption of any of Our promotional vouchers apply:
 - 8.2.1. you may use Our promotional vouchers as payment for Products.
 - 8.2.2. promotional vouchers can only be redeemed once and cannot be used in conjunction with other promotional vouchers. Individual brands may be excluded from voucher promotions.
 - 8.2.3. the credit of a promotional voucher cannot be used to pay for products from third parties other than Us.
 - 8.2.4. the credit of a promotional voucher does not accrue interest nor does it have a cash value.
 - 8.2.5. if you place an Order for a Product which is less than the full value of the promotional voucher, no refund or residual credit will be returned to you.
 - 8.2.6. if the credit of a promotional voucher is insufficient for the Order you wish to make, you may make up the difference through payment.
- 8.3. To redeem a voucher you must advise Us via email of your intention to use the voucher as either part or full payment for Product.
- 8.4. If you have a promotional voucher, you can assign your rights to use that voucher such that voucher can be used by someone other than you.
- 8.5. In the event of fraud, an attempt at deception or the reasonable suspicion of other illegal activities involving you in connection with the use of Our promotional vouchers, We may close your Account and/or require a different means of payment.
- 8.6. We accept no liability for the loss, theft or ineligibility of Our promotional vouchers.

9. Limitation of Liability

- 9.1. Some legal obligations imposed by law, such as the Australian Consumer Law, cannot be excluded or limited. No attempt to limit or exclude such obligations is made by Us and they apply to these Terms and Conditions, any Contract between you and Us, and your use of the Site to the extent required by the relevant laws. This clause 9 prevails over all other clauses and sets forth Our entire liability, and your sole and exclusive remedies, for:
- 9.1.1. the performance, non-performance, purported performance or delay in performance of these Terms and Conditions or a Contract or the Site (or any part of it or them); or
 - 9.1.2. otherwise in relation to these Terms and Conditions, a Contract or the Site.
- 9.2. We exclude to the extent permitted by law all other terms, conditions, warranties and guarantees which might otherwise be implied into these Terms and Conditions or a Contract.

10. Customer Complaints

- 10.1. We shall perform Our obligations under these Terms and Conditions with reasonable skill and care.
- 10.2. We place great value on customer satisfaction. Please email Us at any time if you have concerns regarding an Order. We will attempt to address your concerns as soon as reasonably possible and will contact you on receipt of any relevant enquiry or complaint. In guarantee cases, the manufacturer frequently must be involved, and as such it may take longer to resolve such an enquiry or complaint.
- 10.3. In the event of a complaint it will help Us if you can describe the object of your complaint as accurately as possible and, where applicable, send Us copies of the Order and any order number that We may have communicated to you. If you have not received any response from Us within 5 Business Days, please make further enquiries in case your original message has not been received by Us.

11. Circumstances Beyond Our Control (Force Majeure Clause)

- 11.1. We shall not be liable for any breach, hindrance or delay in the performance of a Contract attributable to any cause beyond Our reasonable control, including without limitation any natural disaster and unavoidable incident, actions of third parties (including without limitation hackers, suppliers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, epidemic, pandemic, fire, explosion, storm, flood, drought, weather conditions, earthquake, natural disaster, accident, mechanical breakdown, third party software, failure or problems with public utility supplies (including

electrical, telecoms or Internet failure), shortage of or inability to obtain supplies, materials, equipment or transportation (**Event of Force Majeure**) regardless of whether the circumstances in question could have been foreseen.

- 11.2. Either you or We may terminate a Contract immediately upon written notice to the other if an Event of Force Majeure lasts for a period of two Business Days or more, in which case neither you nor We shall be liable to the other by reason of such termination (other than a refund in respect of a Contract already paid for by you, where the Product the subject of the Contract has not been dispatched).

12. Notices

- 12.1. Any notice under a Contract must be in writing and may be served by personal delivery or by pre-paid or recorded delivery letter or by email addressed to the relevant party at the address or email address of the relevant party last known to the other.

13. Trade Marks

- 13.1. Our name and any other trade marks appearing on the Site are trade marks of Ours or other third parties who We represent.
- 13.2. Nothing contained on the Site, or in these Terms and Conditions, is to be construed as granting, by implication, estoppel, or otherwise, any licence or right to display, use or link to the trade marks, whether registered or unregistered, without Our prior written permission or the prior written permission of the relevant third party owner.

14. Linked Sites

- 14.1. The Site may be linked to other websites over which We have no control. We do not sponsor, endorse, adopt, confirm, guarantee or approve the content or representations made on those websites; likewise We make no representations about the accuracy of the content contained on those websites.

15. General

- 15.1. No failure or delay by Us or you in exercising any right under these Terms and Conditions or a Contract shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish Our or your rights under these Terms and Conditions or a Contract.
- 15.2. If any clause in these Terms and Conditions or a Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other clause or part of any clause, all of which shall remain in full force and effect, so long as these Terms and Conditions or a Contract shall be capable of continuing in effect without the unenforceable term.

- 15.3. You shall not assign, transfer, novate, charge, sub-contract, create any trust over or deal in any manner with these Terms and Conditions or a Contract or all or any of your rights or obligations under these Terms and Conditions or a Contract, except as otherwise agreed.
- 15.4. Nothing in these Terms and Conditions or a Contract shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between you and Us.
- 15.5. No person who is not a party to these Terms and Conditions or a Contract shall acquire any rights under it or be entitled to benefit from any of its terms even if that person has relied on such term or has indicated to any party to these Terms and Conditions or that Contract its assent in any such term.
- 15.6. These Terms and Conditions and any Contract (and all non-contractual obligations arising out of or connected to them) shall be governed and construed in accordance with Australian law. Both you and We hereby submit to the exclusive jurisdiction of the Australian Courts. All dealings, correspondence and contacts between us shall be in English.

16. Updating of the General Business Terms and Conditions

- 16.1. We reserve the right to amend these Terms and Conditions at any time, with any amendments to be posted on the Site.