

Terms & Conditions

This agreement sets out the terms under which Maison (a European design) ABN 36 077198 246 and provides goods or services to you (being the individual, company or legal person purchasing such goods or services) (the Buyer).

These terms and conditions cover all of our goods and services we offer. Keep in mind that some of the terms in this agreement will only apply if you are ordering from us wholesale and/or for custom designs and not through our website or store.

If the Buyer orders, accepts or pays for any goods or services after receiving or becoming aware of these terms, or otherwise indicates assent, then the Buyer is taken to have accepted these terms.



1. ORDERS

(a) These terms will apply to all the Buyer's dealings with MAISON, including being incorporated in all agreements, quotations or orders under which MAISON is to provide goods or services to the Buyer (each an **Order**) together with any additional terms included in a Quote (provided such additional terms are recorded in writing) (also an **Order**).

(b) If you are ordering custom designs, based on our communications with you, we will prepare a draft quote for you, written or otherwise agreed (**Quote**).

(c) Maison is entitled to vary any Order for goods where goods have been superseded by any manufacturer. Goods may vary slightly where they have been superseded by any manufacturer.

(d) In the event of any inconsistency between these terms and any Quote, the Quote will prevail over these terms to the extent of such inconsistency.

2. BUYER OBLIGATIONS

(a) The Buyer must provide Maison with all documentation, information and assistance reasonably required for MAISON to complete the Order.

(b) The Buyer agrees to liaise with Maison as it reasonably requests for the purpose of enabling Maison to complete the Order.

(c) You are responsible for confirming that your Quote accurately specifies (if applicable):

(i) the quantity, dimensions, colours and specifications of the goods and/or services required before accepting any Order; and

(ii) the agreed fees (defined and set out in the Quote) and any other applicable rates.

(d) You acknowledge and agree that:

(i) the quoted price may change depending on actual goods and services provided including any third party suppliers, shipping and delivery charges; and

(ii) by accepting a Quote, you are committing to paying the total amount payable under these terms and conditions in accordance with clause 4 including any variations or additional costs necessary to complete your Order.

(e) Maison will not be responsible for any delay in or failure to complete an Order arising out of or in connection with the Buyer's failure to comply with this clause 2.



3. CUSTOM

3.1 CUSTOM DESIGN

- (a) Any production times given to the Buyer are estimates only.
- (b) Moulds used for custom design Orders remain the property of MAISON and can or may be used for future manufacture of retail/trade/wholesale Orders.
- (c) If the shape/style is not standard for your Order (e.g. cube or rectangular trough) the final product is heavily reliant on any drawings or specifications supplied by you. You are responsible for confirming that your Quote accurately specifies (if applicable) the quantity, dimensions, colours and specifications of the goods and/or services required before accepting any Order. We will not be responsible for any issues with the Order for your non-compliance with this clause or due to you not having provided adequate design instruction.
- (d) If you have not provided adequate design instruction and specified details you agree and authorise MAISON DESIGN to provide final design details for your Order (e.g. wall thickness, rims, drainage holes etc). We will not be responsible for any issues with the Order if you are not satisfied with our design details where you have not provided any design specifications and requested MAISON to do this for you.

3.2 TOLERANCES

- (a) Please note that our custom designs are custom made and there may be variations in design as to what was specified in your Order or advertised by MAISON.
- (b) We use handmade products and handmade moulds. This allows us to provide you with better quality goods.
- (c) We will not be liable for variations due to normal tolerances in custom and handmade products. If you believe your product is defective please contact us.

4. PAYMENT

4.1 DEPOSITS

Unless otherwise agreed in writing (or you are purchasing upfront from our store) MAISON requires a deposit as set out in the Quote (**Deposit**) at the time the Buyer places an Order. The date setting out the final payment will also be listed on the Quote (**Final Payment Date**).

4.2 PAYMENT OBLIGATIONS

Unless otherwise agreed:

- (a) the Buyer must pay for all goods and services prior to delivery;
- (b) in all other circumstances, if MAISON issues an invoice to the Buyer, payment must be made by the time specified on such invoice;
- (c) if the Order is being shipped MAISON requires the Final Payment Date and any outstanding balance to be paid 15 days prior to any shipping arriving into the nominated destination port for both Australian and international shipping. (Full payment is needed prior to landing due to appropriate paperwork needing to be released for destination countries and customs); and
- (d) the Buyer must not set off any money alleged to be owing by Maison against money due by the Buyer to Maison.



4.3 CARD SURCHARGES

Maison reserves the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

4.4 GST

Prices listed exclude GST unless otherwise stated. For all custom Quotes GST will be listed separately at the bottom of a tax invoice.

4.5 PAYMENT METHOD

Payments must be made using the payment method stated on the Quote, or if no payment method is stated then via Electronic Funds Transfer to an account nominated by Maison.

5. CHANGES

- (a) The Buyer must pay additional service fees for changes to the Order requested by the Buyer which are outside the scope set out in the relevant Quote.
- (b) Unless otherwise agreed in writing MAISON may at its discretion extend or modify any delivery schedule or deadlines for the Order as may be reasonably required by such Changes.

6. CANCELLATIONS AND REFUNDS

- (a) If a Buyer cancels an Order once it has been accepted by MAISON but prior to the delivery of the goods:
 - (i) the cancellation must be in writing;
 - (ii) MAISON will not refund the Deposit to the Buyer; and
 - (iii) the Buyer will be liable to pay any carrier fees, if the goods were already dispatched at the time of the cancellation.
- (b) MAISON may offer an exchange or credit for any goods returned to us so long as they are in retail quality.

7. DELIVERY

7.1 DELIVERY TIMES

- (a) Whilst all care and effort is given to providing an accurate arrival and delivery date, lead times and delivery dates are approximate and are heavily reliant on external factors such as third party suppliers, shipping and customs.
- (b) Lead time only begins after MAISON receives a Deposit and confirmation of an Order from the Buyer and not from the date of any initial enquiry, Quote and/or Quote.
- (c) MAISON will not be liable for any delay in delivery due to third party suppliers, delivery services, shipping and customs issues.
- (d) In the event of a delay to your Order, MAISON will endeavour to keep you informed of delays and updates to your Order as soon as reasonably practicable.



7.2 COST AND OBLIGATIONS

For goods to be delivered, MAISON may charge the Buyer for delivery at any time (notwithstanding that it may not have previously done so).

- Where prices are stated as inclusive of delivery, delivery is to the delivery point specifically accepted by MAISON.
- MAISON holds marine grade insurance (and in some cases road insurance) which covers delivery of goods to the site and/or your receipt of the goods. Please note this insurance is limited and there may be situations beyond our control that result in non-delivery, lateness of delivery or loss or damage of the goods during transit. We will Endeavor to provide you with up to date information on the delivery of your goods.
- If the Buyer organises delivery independently of MAISON, MAISON shall not be held liable for non-delivery, lateness of delivery or loss or damage of the goods during transit.
- Wholesale Buyers are advised to obtain their own insurance for any interstate and/or country shipping of goods. Other than as set out above in clause 7.2(c), our Orders do not come with insurance as our third party delivery services do not provide insurance.

INSTALLATION

- MAISON is not responsible for any installation costs of goods including labour costs after delivery of goods. You indemnify Maison for any costs or damages incurred from installation.
- MAISON will not be liable for any additional costs associated with installing replacement costs due to damage caused after delivery. If you have concerns about installation and delivery or any defects in your goods, please contact MAISON prior to installation.
- Sometimes installation is a costly and lengthy process and if you do not check with us we cannot assist after installation.

Mechanical Unloading

The Buyer is solely responsible for all loading and unloading of the goods including any mechanical unloading. To the full extent permitted by law, MAISON will not be held liable for any consequential loss or any other damage occurring through mechanical unloading.

7.3 DAMAGE IN TRANSIT

- MAISON will not be liable for loss of or damage to goods in transit after the goods have been deemed to be accepted by you, your representative or delivered to a storage facility.
- Maison does have limited marine grade insurance and some road insurance in the event of damages in transit. (This insurance only covers repair and replacement. Please note any replacement would take at least 2-3 months lead time.) If you think you have a claim to make for damage in transit please contact MAISON to discuss your claim. In the event a claim is made, the Buyer authorises MAISON to make an insurance claim on the Buyer's behalf and the Buyer will provide all reasonable assistance and information necessary to assist with the claim.
- The Buyer must make all additional claims for loss or damage against any applicable carrier, delivery service or the storage or warehouse facility.

7.4 BUYER PICK UP

- In the event that the Buyer fails to collect any goods on a specified date, the Buyer is responsible for any additional storage fees to hold the goods (for example at a port or warehouse).



8. STORAGE AND IMPORT-EXPORT

(a) Where MAISON is requested by the Buyer or required, due to an act or failure of the Buyer, to store goods including at a third party location after the Final Payment Date, or to import or export goods, MAISON reserves the right to invoice the Buyer upfront for all costs already incurred by MAISON and the Buyer must agree to pay such invoices in accordance with this agreement.

(b) Maison does have limited marine grade insurance and some road insurance and third party cover which may cover the Buyer for some storage and import-export situations. Maison recommends all Buyers obtain their own insurance regarding storage and import-export to fully cover any issues, delays and damages to goods through the storage and import-export of an Order. Maison can only provide limited cover and any issues above this cover are ultimately the Buyer's responsibility.

9. THIRD PARTY GOODS AND SERVICES

Any Order that requires Maison to acquire goods and services supplied by a third party on behalf of the Buyer, including to warehouse or store goods or to arrange the import or export of goods, may be subject to the terms & conditions of that third party (**Third Party Terms**), including 'no refund' policies.

- The Buyer agrees to any Third Party Terms applicable to any goods and services supplied by a third party that the Buyer or Maison acquires as part of the Order and Maison will not be liable for any loss or damage suffered by the Buyer in connection with such Third Party Terms.

- The Buyer is ultimately responsible for any Third Party Terms including any storage and import-exports fees and fully indemnifies Maison against all claims arising from using any Third Party goods and services required by the Buyer.

10. TITLE AND RISK

(a) Until the price of goods is paid in full, title in those goods is retained by MAISON.

(b) Risk in the goods will pass to the Buyer on the first of:

(i) the Final Payment Date;

(ii) when the Buyer collects the goods from Maison (either at our store or another location); or

(iii) when the goods have left any Maison location or arrive into a third party storage facility and have been accepted for delivery. Delivery will be deemed to be accepted where goods have been delivered to a nominated metro destination or a third party storage facility. If goods are delivered to a storage yard there must be a representative from the Buyer on site to inspect the goods on unloading. Maison will not be responsible for any issues after Acceptance.

(c) Delivery may not be refused by the Buyer.

(d) If the Buyer does not pay for any goods on the Final Payment Date, the Buyer authorises Maison, its employees and agents to enter any premises occupied by the Buyer or any other place where the goods are located and use reasonable force to retake possession of the goods without liability for trespass or damage.

(e) Maison may at its option keep or resell goods retaken from the Buyer.

(f) If the Buyer sells the goods or sells items into which the goods are incorporated before payment in full to Maison, the Buyer acknowledges that such sale is made by the Buyer as bailee for and on behalf of Maison, to hold the proceeds of sale on trust for Maison, in an account in the name of Maison, and must pay that amount to Maison on demand.



11. DEFECTIVE GOODS AND ACCEPTANCE

11.1 RETURN OF GOODS

MAISON will only accept returns of goods if:

- (a) the goods are defective and the Buyer complies with the provisions of this clause 11;
- (b) MAISON agrees in writing to accept return of the goods.

If the Buyer fails to comply with the provisions of this clause 11 in respect of defective goods, Maison may, in its discretion, issue only a partial refund or no refund in respect of such defective goods, provided that nothing in this clause 11 is intended to limit the operation of any manufacturers' warranties which the Buyer may be entitled to or any rights of the Buyer which cannot be excluded under applicable law.

11.2 DEFECTIVE GOODS

Where the Buyer considers that any goods provided by Maison are defective, the Buyer must, within five (5) business days of receiving the goods, inform Maison of that fact in writing providing the following information:

- (a) a detailed description of the defect/s; and
- (b) if applicable, photographs of the defects.

11.3 BUYER'S OBLIGATIONS

11.4 Where goods are the subject of a notice under clause 11.2 and Maison agrees that the goods may be defective, the Buyer must within ten (10) business days of such agreement (unless otherwise directed by Maison):

- (a) the Buyer must leave the goods in the state and condition in which they were delivered until such time as MAISON or its duly authorised agent has inspected the goods;
- (b) such inspection will be carried out within 30 days after notification by the Buyer; and
- (c) if paragraph 11.4(a) is not complied with, the Buyer will be taken to have accepted the goods and Maison will be entitled to the price for the goods set out in any Order.

11.5 REPAIRS OR REPLACEMENTS OF DEFECTIVE GOODS

If, upon inspection of the goods, or after receiving notice under clause 11.2, in the reasonable opinion of Maison as set out in clause 11.6:

- (a) the goods are defective; and
- (b) the goods were not damaged by the Buyer and/or the Buyer did not fail to take reasonable steps to prevent the goods from becoming damaged; or
- (c) the goods are otherwise not in conformity with the Order, then at Buyer's option, Maison will:
 - (i) replace the goods or supply the equivalent of the goods; or
 - (ii) repair the goods.
- (d) Maison will not refund any delivery fee the Buyer paid in relation to the goods.
- (e) Please be aware that where Maison is required to replace the goods or supply the equivalent and if the Order is a custom design there will be lead times and you may have significant wait times for Maison to source equivalent goods. This is because some of our goods come from overseas and are handmade.
- (f) the goods were not damaged by the Buyer and/or the Buyer did not fail to take reasonable steps to prevent the goods from becoming damaged; or
- (g) Maison will not refund any delivery fee the Buyer paid in relation to the goods.
- (h) Please be aware that where Maison is required to replace the goods or supply the equivalent and if the Order is a custom design there will be lead times and you may have significant wait times for Maison to source equivalent goods. This is because some of our goods come from overseas and are handmade.



MINOR ISSUES

If, upon inspection, or after receiving notice under clause 11.2, in the reasonable opinion of Maison, the problem with the goods is minor and the Buyer asks Maison to remedy the problem, Maison at its discretion, will:

- (i) repair the goods; or
- (j) replace the goods and/or the faulty part/s of the goods.

11.6 NOT DEFECTIVE

If, upon inspection, or after receiving notice under clause 11.2, in the reasonable opinion of Maison:

- (a) the goods are not defective; or
- (b) the goods are defective due to an act or omission of the Buyer, misuse, failure to use in accordance with the manufacturer's instructions, or failure to take reasonable care by the Buyer;
- (c) the goods are otherwise in conformity with the Order,

Maison will refuse the Buyer's return, the Buyer will be taken to have accepted the goods and Maison will be entitled to the price for the goods set out in any Order.

11.7 ACCEPTANCE

Except where notice has been given in accordance with clause 11.1, acceptance of the goods is deemed for all purposes to have taken place when the first of the following occurs:

- (a) when the Buyer intimates to Maison that it has accepted the goods;
- (b) when the Buyer, after delivery of the goods, does any act in relation to them which is inconsistent with Maison' ownership of the goods; or
- (c) upon the expiry of 7 (seven) business days from the date of delivery, whichever first occurs; or
- (d) when the goods have left any Maison location or arrive into a third party storage facility and have been accepted for delivery. Delivery will be deemed to be accepted where goods have been delivered to a nominated metro destination or a third party storage facility. If goods are delivered to a storage yard there must be a representative from the Buyer on site to inspect the goods on unloading.

11.8 BUYER TO PAY FOR RETURN AND CONDITION OF GOODS

- (a) The Buyer is responsible for costs associated with the return of any defective goods. If Maison is required to pick up any goods pick-up location is to be the same location as initial delivery of goods.
- (b) Maison will not be liable for any additional charges required for installation, re-installation or removal of any goods (for example if goods are moved using a crane). Please check with Maison and notify us if you have any concerns.
- (c) **(Condition)** Goods are to be in the same condition as when delivered. No soil, plants, aggregate, etc are to be on any goods that are to be picked up or returned. The Buyer is responsible for ensuring goods are in essentially the same condition.



12. CONFIDENTIALITY

Except as contemplated by these terms, each party must not, and must not permit any of its officers, employees, agents, contractors or related companies to, use or disclose to any person any confidential information disclosed to it by the other party without its prior written consent. This clause 12 does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information required to be disclosed by any law; or
- (c) information disclosed by Maison to its subcontractors, employees or agents for the purposes of performing the Order or its obligations under these terms.

13. INTELLECTUAL PROPERTY

13.1 BUYER CONTENT

The Buyer grants to Maison (and its subcontractors, employees and agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Buyer Content to the extent reasonably required to complete any part of the Order.

The Buyer:

- (a) warrants that Maison use of Buyer Content as contemplated by these terms will not infringe any third-party Intellectual Property Rights; and
- (b) will indemnify Maison from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement or a claim of such an infringement.

13.2 DEVELOPED IP

Unless otherwise agreed, all Developed IP will be solely and exclusively owned by Maison.

13.3 Maison IP

(a) Maison grants to the Buyer a non-exclusive, royalty free, non-transferable and revocable licence to use Maison IP and any Developed IP to the extent required for the Buyer to use, enjoy the benefit of or exploit the Order.

•Unless otherwise agreed in writing by Maison or in this clause 3, the Buyer will not acquire Intellectual Property Rights in any Maison IP under these terms or as part of receiving the Order.

13.4 DEFINITIONS

For the purposes of this clause 13:

- “**Buyer Content**” means any Material supplied by the Buyer to Maison under or in connection with these terms, including any Intellectual Property Rights attaching to that Material.
- “**Developed IP**” means the Order and any other Material produced by Maison in the course of completing the Order, either alone or in conjunction with the Buyer or others, and any Intellectual Property Rights attaching to that Material and includes any moulds produced.
- “**Intellectual Property Rights**” means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, confidential information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the Order Date set out in an Order, whether registered or unregistered.
- “**Maison IP**” means all Material owned or licensed by Maison that is not Developed IP and any Intellectual Property Rights attaching to that Material.
- “**Material**” means tangible and intangible information, documents, reports, drawings, designs, software (including source and object code), inventions, concepts, data and other materials in any media whatsoever.



14. SUBCONTRACTING

Maison may subcontract any aspect of providing the goods and/or services and the Buyer hereby consents to such subcontracting.

15. WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement or an Order are excluded.
- (b) Where any law (including the *Competition and Consumer Act 2010* (Cth)) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law, Maison' liability for breach of that non-excludable condition, warranty or guarantee will, be limited to:
- (i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
- (ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

16. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, and without limiting the operation of the *Competition and Consumer Act 2010* (Cth), Maison' liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with these terms, any Quote, any Order or any Third Party Terms:

- (a) is excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill including in relation to any mechanical loading or unloading or any installation of goods; and
- (b) is limited, insofar as concerns other liability, to the total money paid to Maison under these terms as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

17. INDEMNITY

The Buyer indemnifies Maison from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of these terms or any Quote or other Order by the Buyer;
- (b) any damage suffered through using any third party goods and services including storage facilities and any import-export arrangements;
- (c) any negligent, fraudulent or criminal act or omission of the Buyer or its personnel; or
- (d) any installation, loading or unloading of any goods.



18. DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these terms prior to commencing any proceedings.
- (b) If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is an individual, that individual.
- (c) The parties acknowledge that compliance with this clause 18 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
- (i) in the case of applications for urgent interlocutory relief; or
 - (ii) a breach by another party of this clause 18.

19. GENERAL

19.1 GOVERNING LAW

This agreement is governed by the law applying in South Australia, Australia.

19.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of South Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

19.3 AMENDMENTS

This agreement may only be amended by a document signed by each party.

19.4 NOTICE

Any notice given under these terms must be in writing and addressed to us at the details set out in the Quote. A notice may be sent by standard post or email and will be regarded as given and received 48 hours in the case of post, or 24 hours after the email was sent.

19.5 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.6 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.

19.7 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party.