

# the **FINDERS** KEEPERS

## **TERMS AND CONDITIONS FOR ONLINE SELLERS**

By applying for a Store on our Online Marketplace you agree to be bound by these Seller's Terms and Conditions (**Terms**) as well as our Privacy Policy.

### **About the Online Marketplace**

The Finders Keepers Online Marketplace is a marketplace that allows users to sell their products.

The Online Marketplace is a curated online platform for you to sell your products. By setting up a Store, you will contract with the buyers directly in relation to the sale of goods. In other words, the Finders Keepers acts as an agent between you and the buyer

### **1. Definitions**

**"ABN"** means Australian business number.

**"Agreement"** means the agreement between The Finders Keepers and a Seller in relation to providing a Store on the Online Marketplace incorporating these terms and conditions and the Privacy Policy, as amended from time to time.

**"Application"** means the application to exhibit with The Finders Keepers.

**"Australian Consumer Law"** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**"We/us/our" or "The Finders Keepers"** refers to The Finders Keepers Retail Pty Limited (ACN 618 312 191).

**"You/Your" or "the Seller"** refers to you personally and/or your company and (if applicable) any staff, contractors, agents or representatives.

**"Claim"** means any claim, action, liability, proceeding or demand of any nature however it arises

**"Confidential information"** means information that is by its nature confidential but does not include information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under these terms and conditions and includes our documentation, pricing, marketing strategies, information and related documents to the Online Marketplace.

**"Commission"** means the amount of the gross proceeds of sale of the Seller's products through the Online Marketplace

**"Customer(s)"** means a customer of the Seller's Store on the Online Marketplace.

**"Fee"** means a fee which the Seller has agreed to pay to The Finders Keepers.

**"GST"** means any form of goods and services tax payable under the GST Legislation;

**"GST Legislation"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Intellectual Property Rights"** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks (registered or unregistered), designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity.

**"Merchant Fees"** means the fee which The Finders Keepers is charged to process secure Credit card, Debit card, Pin Payments, PayPal payments through the Online Marketplace. The Finders Keepers do not take any profit from these fees.

**"Non-Excludable Provision"** means a guarantee, term, condition, warranty, right or remedy implied or imposed by any Australian statute (for example, the Australian Consumer Law) or regulation which cannot lawfully be excluded or limited under the terms of that statute or regulation.

**"Online Marketplace"** means the online trading website operated by us that allows users to sell their products and customers to purchase products.

**"Order"** means an order placed by a Customer to purchase a product from the Seller using the Online Marketplace.

**"Payout"** means the cost of the transaction minus the Sellers fees.

**"Privacy Policy"** means the privacy policy of The Finders Keepers

**"Seller Administration Section"** means the section of the Online Marketplace's content management system that is used by the Seller to upload information and image files and manage Orders.

**"Seller's Information"** means any information or materials that the Seller provides in its Store, including any product names, images or trademarks.

**"Seller's Store"** means the information and images that the Seller has provided for inclusion on the Website or which the Seller has uploaded to the Website through the Seller Administration Section.

**"Seller's Website"** means a website published by or on behalf of Seller and includes any website through which Seller offers products for sale, other than The Finders Keepers Website.

**"Standard Customer Terms"** means the standard terms and conditions that apply to the offer, sale and supply of products to Customers on the Online Marketplace.

**"Store"** means, in respect of a Seller, the information and images that a Seller has provided for inclusion on the Online Marketplace or which the Seller has uploaded to the Online Marketplace through the Seller Administration Section.

**"Subscription Fee"** means the fee the Seller has agreed to pay to The Finders Keepers on either a monthly or yearly basis.

**"User Manual"** means the user manual as amended from time to time made available to the Seller through the Seller Administration Section.

## 2. Agency relationship

- a. The Seller appoints The Finders Keepers as the Seller's agent to:
  - i. offer and sell products that the Seller displays in its Store;

- ii. enter into agreements with Customers for the sale of such products on the Standard Customer Terms and any other terms and conditions permitted or contemplated under this Agreement; and
  - iii. do all other things necessary or desirable in relation to the promotion, sale and supply of the Seller's products on the Online Marketplace, including promotion through print catalogues, print advertisements, Google AdWords, Facebook, Instagram and other print and electronic media channels.
- b. The relationship between the Seller and The Finders Keepers is one of principal and agent. The Finders Keepers acts solely as the agent of the Seller.
- c. When a Customer purchases a product from the Online Marketplace, the contract for sale is formed between the Customer and Seller.
- d. The product is shipped by the Seller directly to the Customer and does not come into the ownership or possession of The Finders Keepers at any time.
- e. When a Customer makes a purchase on the Online Marketplace, The Finders Keepers in its capacity as the Seller's agent will automatically generate an invoice for that transaction. The Seller will not render any separate or additional invoice in respect of such sale.
- f. The Finders Keepers also provides various marketing and advertising services to promote the sale of Seller's products.

### **3. Subscription, Commission and Merchant Fees**

- a. The Seller will pay The Finders Keepers
  - i. the Commission in relation to each Order;
  - ii. Subscription Fees; and
  - iii. Merchant Fees calculated at the current rate.
- b. The Finders Keepers will invoice Seller for Commission on Orders shipped during the previous week and any applicable Fees. This will be calculated on the Seller's Payout totals;
- c. The Finders Keepers will deduct the Commission, Fees and any adjustments for refunds from the payments it has collected pursuant to clause 3.a above and will pay the net amount to Seller, by electronic funds transfer.
- d. The Finders Keepers will provide the Seller with a statement showing details of how the net amount is calculated, including any credits or offsets.
- e. If the amount of such invoice is greater than the amount collected pursuant to clause 3.a, The Finders Keepers may at its discretion either
  - i. create a credit note for the difference and offset it against amounts payable to Seller in subsequent months; or
  - ii. invoice Seller for the difference, payable within 14 days of the invoice date.

### **4. GST**

- a. This clause applies only to Australian Sellers.

- b. The Seller must supply a valid ABN.
- c. It is highly recommended that the Seller is registered for GST. In the event, the Seller is not registered for GST, then the Seller will not be able to claim GST on their sales.
- d. Invoices issued by The Finders Keepers to the Seller will be inclusive of GST.

## **5. Seller's Obligations**

- a. The Seller will not:
  - i. use the Seller Administration Section or the Online Marketplace beyond the scope of use contemplated by this Agreement;
  - ii. access the Seller Administration Section or the Online Marketplace unlawfully;
  - iii. modify or make derivative works based on the Online Marketplace;
  - iv. attempt to reverse engineer or access the backend of the Online Marketplace with the intention of creating a competitive product or service; or
  - v. copy or build any concepts, features, functions or graphics based on the Online Marketplace.
- b. The Seller acknowledges that damages may not provide an adequate remedy for breach of this clause and that The Finders Keepers will be entitled to seek injunctive relief to prevent the occurrence or continuance of any alleged breach.

## **6. Seller's Store and the Online Marketplace**

- a. The Finders Keepers will provide Seller with a User Manual containing instructions on how to set up and manage its Store.
- b. The Seller will not promote or include any reference to any other business or website in its Store.
- c. The Seller will ensure that the Seller's Information:
  - i. is accurate, complete, up-to-date and not misleading or deceptive;
  - ii. does not contain any virus (including any computer program or code that can disrupt the operation of software, hardware or systems, or cause file deletions, file modifications or other effects that are not part of the functionality of software, hardware or systems);
  - iii. complies with all applicable laws;
  - iv. is not defamatory or in contempt of any legal or other proceedings;
  - v. is not indecent, obscene, vulgar, pornographic, offensive or of doubtful propriety;
  - vi. is not of a menacing character;
  - vii. is not discriminatory to any group of persons including groups defined by reference to colour, race, sex, origin, nationality or ethnic or national origins; or
  - viii. is not offensive or denouncing of political or religious beliefs.

- d. The Seller will ensure that all products offered for sale in its Store are of a nature consistent with The Finders Keepers reputation as featuring the work of independent makers and designers from across Australia.
- e. The Seller will not do anything that adversely affects the reputation or goodwill of The Finders Keepers or the Online Marketplace. The Finders Keepers may immediately remove any product or any of Seller's Information from the Store and the Online Marketplace if The Finders Keepers believes that it fails to comply with this Agreement, or that it is inconsistent with the 'look and feel' of the Online Marketplace.
- f. The Seller acknowledges that The Finders Keepers retains the absolute and unconditional right to determine:
  - i. the nature of all other sellers using the Online Marketplace and products offered for purchase using the Online Marketplace (including products that are the same or similar to the Seller's products); and
  - ii. the manner in which the Online Marketplace is presented (including the nature and arrangement of content, the categorisation of products, the order in which products and sellers are presented, features, functionality, advertising, links and the 'look and feel').

## **7. Seller Administration Section**

- a. The Finders Keepers will provide a Seller Administration Section for the Online Marketplace where Seller can set up a Store and enter, edit and update product details and manage Orders.
- b. The Seller is responsible for providing its own computer hardware, software and internet services to access and use the Seller Administration Section. The Finders Keepers has no responsibility for the provision, support and maintenance of any of the Seller's hardware or software.
- c. The Seller will ensure that at all times:
  - i. all computer hardware and software it uses to access the Online Marketplace is equipped and functions with up-to-date software and protection against viruses; and
  - ii. that information supplied electronically to The Finders Keepers and to the Website is submitted free from viruses.
- d. The Seller Administration Section requires the Seller to set up a password. The Seller will keep any such password confidential, not disclose it to any third party and notify The Finders Keepers if Seller suspects there has been any improper use or disclosure. The Seller is responsible for any access to or use of a Store that is made with Seller's password unless and until the Seller has notified The Finders Keepers of any suspected improper use.
- e. The Seller must immediately notify The Finders Keepers of any potential security threats to the Online Marketplace which they become aware of.

## **8. Privacy Policy**

- a. The Seller consents to our Privacy Policy
- b. The Seller agrees to use the email addresses of Customers solely for purposes of promoting and marketing its business.

## **9. Seller's terms of supply**

- a. The Seller will offer, sell and supply products to purchasers who use the Online Marketplace on the Standard Customer Terms and on no other terms and conditions.
- b. The Seller acknowledges that The Finders Keepers is not responsible for providing Seller with any legal advice on the Standard Customer Terms. The Seller should obtain its own legal advice to determine whether the Standard Customer Terms are suitable for the Seller and its products.
- c. Subject to clause 9.d, the Seller will offer its Customers free delivery on all products purchased through the Online Marketplace.
- d. In the case of unusually heavy or bulky items, The Finders Keepers may in its absolute discretion permit the Seller to charge extra for delivery. If Seller wishes to include any such items in its Store, the Seller must first discuss the proposed charges with The Finders Keepers and will not proceed to impose such charges without specific approval from The Finders Keepers.
- e. Unless otherwise agreed by The Finders Keepers, the Seller will ensure that the prices of products offered for purchase in its Store are the same as or lower than the prices for those products available for purchase on Seller's Website.

## **10. Customer Orders, payment and fulfilment**

- a. If a Customer places an Order:
  - i. The Finders Keepers will collect payment for that Order on behalf of Seller using the payment mechanisms made available by The Finders Keepers, provided however The Finders Keepers may decline to collect or process any payment at its discretion (for example, in the case of fraudulent or suspicious Orders); and
  - ii. upon receipt of payment for the Order, The Finders Keepers will:
    - 1. notify Seller of the Order by email alert; and
    - 2. include details of the Order in the Seller Administration Section for access by Seller.
- b. Upon notification of an Order, Seller will:
  - i. fulfil the Order by shipping the relevant product with within 2 business days or within such other period specified in the dispatch note which Seller has set for that product in Seller's Store; and
  - ii. promptly update the order status in the Seller Administration Section to indicate that the product has been shipped.

- c. If Seller ships a product in fulfilment of an Order and the Customer does not receive the product for any reason, Seller will promptly ensure that alternative fulfilment arrangements are executed.

## **11. Returns, refunds, disputed payments and dissatisfied Customers**

- a. The Seller will adopt and adhere to the Returns Policy. The Seller may also offer Customers additional rights of return or replacement provided that such rights are more favourable to the Customer. The Seller cannot refuse any returns, repairs or replacement if they are required to return, repair or replace the item under the Australian Consumer Law.
- b. The Seller may choose to repair or replace the item if requested by the Customer. If the item is faulty, then the Seller will not charge the Customer for return shipping expenses. All exchanges due to change of mind are to be returned to the Seller at the Customer's expense.
- c. If the Customer and the Seller cannot reach an amicable resolution, then Finders Keepers will use its best endeavours to resolve the dispute in accordance with the Returns Policy, in its capacity as agent for the Seller.
- d. In situations where disputes can be resolved by the issue of a refund:
  - i. The Seller may process the refund, and will reimburse The Finders Keepers for the value of the refund, if their Payout has already been processed; and
  - ii. The Finders Keepers will not charge Commission in relation to the sale in question and will create a credit in favour of the Seller for any Commission that has already been paid.

## **Warranty**

- e. You warrant that all products sold on the Online Marketplace and (where applicable) related promotional materials:
  - i. Comply with relevant safety laws and regulations;
  - ii. Do not infringe any third party rights including Intellectual Property Rights;
  - iii. Do not contain material which is abusive, defamatory, hateful, discriminatory, racist, sexist, offensive, misleading or deceptive or is otherwise unlawful in any manner; and
  - iv. Comply with any legal requirements in relation to the sale of cosmetics, including mandatory standards for cosmetic ingredient labelling.
- f. Further, You are responsible for obtaining any relevant permits, certificates or other qualifications to operate and sell products on the Online Marketplace.

## **12. Seller's Liability and Indemnity**

- a. The Seller acknowledges that The Finders Keepers is not a party to, and has no obligations under or in relation to, any agreement that is formed between the Seller and a Customer for the sale and purchase of any product.

- b. The Seller assumes all liability for the performance of all obligations and the discharge of all liabilities under or in relation to
  - i. all agreements for the sale of a product on the Online Marketplace;
  - ii. any product supplied by Seller to a Customer;
  - iii. the fulfilment of any Order accepted by The Finders Keepers on behalf of Seller;
  - iv. the publication of Seller's Information on the Website; and
  - v. any loss or tax relating to or arising out of the supply or sale of any product by the Seller from one territory to a Customer located in, or purporting to be located in, another territory.
- c. The Seller indemnifies The Finders Keepers against any Claims suffered or incurred by The Finders Keepers in relation to:
  - i. any agreement that is formed between Seller and a Customer for the purchase of any product by a Customer from Seller;
  - ii. any product supplied by Seller to a Customer;
  - iii. any Order accepted by The Finders Keepers on behalf of Seller;
  - iv. the publication of any of the Seller's Information on the Online Marketplace;
  - v. any breach by the Seller of this agreement; and
  - vi. any cost, expense, loss, Claim, action or proceedings incurred by or made against The Finders Keepers relating to or arising out of any tax that relates to or arises out of the supply or sale of any product by the Seller from one territory to a Customer located in, or purporting to be located in, another territory.

### **13. Exclusion of The Finders Keeper's Liability**

- a. Seller acknowledges and agrees that:
  - i. it is not feasible for The Finders Keepers to ensure that the Online Marketplace is available at all times or that it is error-free or virus-free and the internet is not necessarily a secure or reliable method of communication;
  - ii. while The Finders Keepers has systems to back-up information on the Online Marketplace, the Seller should retain a copy of Seller's Information so that it be can reloaded to a Store if necessary; and
  - iii. The Finders Keepers is not liable for any failure to properly send or receive communications (including Orders) via the internet, or to make available the Online Marketplace, due to any interference or failure.
- b. Subject to clause 13.c, all express or implied warranties, representations, statements, terms and conditions relating to this agreement or its subject matter (including the Online Marketplace) that are not contained in this Agreement are excluded to the maximum extent permitted by law.
- c. Nothing in this Agreement excludes, restricts or modifies any Non-Excludable Provision.

- d. If a Non-Excludable Provision applies to this Agreement and The Finders Keepers is entitled at law to limit Seller's remedy for a breach of that Non-Excludable Provision, then The Finders Keepers' liability is limited to one or more of the following at The Finders Keepers' option:
  - i. in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - ii. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- e. Subject to clauses 13.f and 0 and subject to The Finders Keepers' obligations under any Non-Excludable Provisions, to the maximum extent permitted by law, The Finders Keepers' maximum aggregate liability for all claims under or relating to this Agreement or its subject matter which arise at any time during or after the Term, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to the lesser of \$2,000 and the aggregate amount of Commissions and Fees that The Finders Keepers has received from Seller.
- f. The limitation in clause 13.e does not apply to The Finders Keepers' obligation to remit payments to Seller that are collected by The Finders Keepers under this Agreement. Subject to The Finders Keepers' obligations under any Non-Excludable Provisions, to the maximum extent permitted by law, The Finders Keepers' is not liable for, and no measure of damages will, under any circumstances, include special, indirect, consequential, incidental or punitive damages or damages for loss of profits, goodwill, anticipated savings or loss or corruption of data whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term, or on any other basis.

#### **14. Intellectual property rights**

- a. The Seller grants The Finders Keepers' a world-wide, non-exclusive, royalty-free license (including the right to sublicense) to use, reproduce and communicate to the public Seller's Information:
  - i. during the Term: either as part of the Website (including in response to search requests or when displaying a list of products sorted by product category) or for promotional purposes relating to The Finders Keepers or the Online Marketplace in any medium; and
  - ii. after the Term: for archival, record-keeping and related and incidental purposes. Direct product links will stay active indefinitely for search engine optimisation purposes, even if a product has been unpublished or deleted, but such products will not be available for purchase.
- b. The Seller represents and warrants that the products displayed on its Store and Seller's Information do not infringe the Intellectual Property Rights of any third party. Seller

indemnifies The Finders Keepers' against any Loss that The Finders Keepers' may suffer or incur as a result of any Claim brought against The Finders Keepers that the products displayed on its Store or the Seller's Information infringes the Intellectual Property Rights of any third party.

- c. The Finders Keepers or its licensors retain ownership of all Intellectual Property Rights in and to the Online Marketplace (other than Seller's Information). Except as expressly permitted by this Agreement, the Seller will not use or reproduce The Finders Keepers' name, logo or trade marks without The Finders Keepers' prior written approval.

## 15. Confidential Information

- a. During and after the Term, each party may only use the other party's Confidential Information for the purposes of exercising its rights or performing its obligations under this Agreement. Otherwise, each party will keep the other party's Confidential Information confidential and will not disclose, or cause or permit the disclosure of, such information except with the prior written consent of the other party.
- b. The Seller may only use the information that The Finders Keepers provides to the Seller in relation to a Customer for the purposes of providing the Customer with products that are purchased by the Customer using the Online Marketplace. The Seller will not use such information for marketing or any other purposes.
- c. Specifically, you agree that:
  - i. except as permitted by us, you will not use or disclose any Confidential Information provided to them without our prior written consent;
  - ii. you will only use Confidential Information in a way that is directed by us and to our benefit;
  - iii. you will not use the Confidential Information in a way which is detrimental to us;
  - iv. you will only disclose the Confidential Information strictly on a "need to know" basis to only such of their directors, officers, employees, financiers, professional advisers and members of their respective investment committees (as applicable) as needed to receive that Confidential Information;
  - v. you will ensure that any of your directors, officers, employees and any professional advisers to whom the Confidential Information is disclosed comply with this clause; and
  - vi. you will ensure that the Confidential Information is securely safeguarded.

## 16. Term and termination

- a. This Agreement will commence on the date on which the Seller sets up a Store on the Online Marketplace and will continue for an indefinite period, subject to termination under clauses 16.b or 16.c (**Term**).

- b. Either party may terminate this Agreement at any time without cause by giving notice of termination to the other.
- c. We may also terminate your participation in the Online Marketplace if:
  - i. You are in default in the performance of any of your obligations under these Terms and the default is not capable of being remedied, or if the default is capable of being remedied and you fail to remedy the default within 10 Business Days of notice by us; or
  - ii. You cease to carry on business, cease to be able to pay your debts as they become due, enter into a compromise with your creditors, go into liquidation, or a receiver and manager or statutory receiver is appointed, or any analogous event occurs.
- d. On termination of this Agreement:
  - i. The Finders Keepers may immediately remove the Seller's Store and Information from the Online Marketplace; and
  - ii. the Seller will continue to perform its obligations under this Agreement for Orders received before termination.
- e. Clause 15 survives termination of this Agreement.

## **17. Non-transferrable**

The right to participate in the Online Marketplace must not be transferred, sold, assigned or sublet to any other person or company without our prior written consent. In the event that we consent to Your rights to participate in the Online Marketplace being transferred, sold, assigned, sublet or otherwise to any other party, You warrant that the party who is receiving these rights must agree to be bound by these Terms and You agree to assist us in procuring such an agreement if required.

## **18. General**

### **a) Interpretation**

In these Terms:

- I. Headings are for convenience only and do not affect interpretation.
- II. Defined terms have the meaning ascribed to them;
- III. A word denoting the singular number includes the plural number and vice versa.

### **b) No implied waiver**

The failure of The Finders Keepers to require performance by You of any obligation arising under these Terms will in no way affect the right of The Finders Keepers to require such performance at any later time. If The Finders Keepers waives a breach by You of any obligation arising under these terms, such waiver will not constitute a waiver of any later breach of the same or any other obligation under these Terms.

**c) Severability**

If any provision of these Terms is or becomes invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the invalid provision will be severed from these Terms and the remaining Terms will remain in full force and effect.

**d) Entire agreement**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior oral or written representations and agreements and the parties expressly agree that neither has relied on pre-contractual conduct or representations of the other party in entering into these Terms.

**e) Jurisdiction**

The parties agree that these Terms are governed by the State of New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of that State.

**f) Amendment of Terms**

The Finders Keepers may amend these terms and conditions and the applicable Commission rate and Fees from time to time and will notify the Seller of any such amendments. By continuing to use the Online Marketplace as a marketing platform after receiving such notification, the Seller will be deemed to have agreed to be bound by such amendments.