

KOGAN.COM MARKETPLACE SELLER TERMS AND CONDITIONS

Kogan Australia Pty Ltd (ABN 53 152 570 35) and its related bodies corporate (“**Kogan**”, “**we**” or “**us**”) operates the following websites across desktop, mobile, tablet and apps (including any subdomains): kogan.com, kogan.com/au, kogan.com/nz, tandyc.com.au, dicksmith.com.au, dicksmith.co.nz, mattblatt.com.au (together the “**Websites**”). Kogan permits certain third party suppliers to advertise and sell their goods and services on the Websites (“**Kogan Marketplace**”).

These terms and conditions govern your access to and use of the Websites to advertise and sell your goods and services directly to Kogan customers (“**Kogan Marketplace**”).

This Agreement contains the terms and conditions that govern the access and use of Kogan Marketplace. By registering to for and using Kogan Marketplace to advertising and sell your and services, you agree to be bound by the following terms. If you are entering into this Agreement on behalf of a corporate entity, you represent and warrant to us that you have legal authority to bind that entity.

We may amend this Agreement (including the trading terms, these terms and conditions and the Marketplace Policies) at any time and at our sole discretion. If we make any material amendments, we will notify you directly by email to the email address linked to your account. Unless we advise you otherwise, all amended terms and Marketplace Policies will automatically be effective 30 days after we provide such notice to you. If you do not accept the changes you must close your account and terminate this Agreement in accordance with clauses 11.1 and 11.2.

Before registering for and using Kogan Marketplace we require you to read and accept our Website Terms and Conditions, our [Privacy Policy](#) and [Spam Act Policy](#), which are incorporated into and form part of this agreement.

If you create an account for Kogan Ads, you also agree to comply with the [Kogan Ads Terms and Conditions](#) and to our [Kogan Ads Collections Statement](#).

1. Registration

- 1.1. Your use of Kogan Marketplace is subject to and conditional upon Kogan accepting your registration form and you successfully completing our registration process.
- 1.2. You represent and warrant that:
 - a) all information you provide to us for the purpose of registering you for Kogan Marketplace is true and accurate;
 - b) you are authorised to sell your goods and services under the Seller Name you provide to us; and
 - c) you will provide us with any documentation or evidence we require to verify the truth or accuracy of such information.
- 1.3. During the term of this Agreement, you must notify us in writing of any changes to your account information.

2. Seller Goods

- 2.1. You will ensure that any Seller Goods (including any packaging and promotional materials) advertised and sold on the Kogan Marketplace:
 - a) conform with any specifications or descriptions for the Seller Goods set out in a Listing;

- b) will comply with all applicable Laws and do not infringe the rights of any third party;
 - c) are of merchantable quality and are free from defects or damage;
 - d) Do not include any marketing or promotional material that promotes another website or retailer;
 - e) are approved for sale to the general public and meet any relevant Australian Certification Standards; and
 - f) otherwise comply with any other requirements set out in the Marketplace Policies
- 2.2. You must notify Kogan if you become aware of any matter which may affect the Seller Goods including:
- a) anything which may affect the composition or characteristics of the Seller Goods or customers' ability to use them;
 - b) compliance with relevant the matters set out in clause 2.1; and
 - c) anything which has or may lead to a recall of the Seller Goods supplied due to health, safety or any other reasons.
- 2.3. In the case of a recall of any Seller Goods, you must immediately notify us in writing and include the following information:
- a) all circumstances which have led to the recall of the Seller Goods;
 - b) any action you are taking or proposing to take in response to the recall;
 - c) details of the progress of the recall and of any other actions taken by you in connection with the recall; and
 - d) any other relevant matter known to the you.
- 2.4. If a maintenance obligation or warranty applies in relation to the Seller Goods or items incorporated in or supplied with the Seller Goods (including any statutory warranties implied by Law), you must ensure that such maintenance and warranty obligations are performed and complied with in full and that the benefit of such warranty is passed to customers.
- 2.5. To the maximum extent permitted by law, you are responsible for any damage or defects in Seller Goods (including any damage incurred during the delivery of Seller Goods to the customer) and for any product recall or safety alerts affecting any of Seller Goods listed on Kogan Marketplace and you indemnify us for any costs or loss or damage we incur in connection with any nonconforming, damaged, defective, unsafe or recalled Seller Goods you have listed on Kogan Marketplace.
- 2.6. You acknowledge and agree that at no time will Kogan take ownership of or title in Seller Goods, and legal ownership of Seller Goods will transfer directly from you to the customer.

3. Seller Listings

- 3.1. You must not List any Excluded Products on Kogan Marketplace.
- 3.2. Subject to clause 3.1, you are responsible for determining which of Seller Goods you wish to List on Kogan Marketplace.
- 3.3. Your Listings must at all times comply with our Marketplace Policies.
- 3.4. Without limiting clause 3.3, you will ensure that Listings comply with all applicable Laws, and do not contain any unpermitted content, such as sexually explicit content, or any content which is, or which in our sole and reasonable discretion we consider, defamatory, obscene or in violation of any third party's copyright, trademark or design.

- 3.5. We will identify you as the seller of any Seller Goods the subject of your Listing. You must identify yourself as the seller of any Seller Goods on all packing slips or other information provided to customers, and identify yourself as the person to which a customer may return the Seller Goods.
- 3.6. In order to List your Seller Goods on Kogan Marketplace, you are required to provide us with any information we notify you that is required (as determined by us in our sole discretion) in respect of each Seller Good you wish to List on Kogan Marketplace, including without limitation the information specified in the Registration Form or any Marketplace Policies.
- 3.7. You acknowledge and agree that we have the right to edit, suspend, prohibit, remove, or take other action in relation to any Listing if in our sole discretion contravenes any term of this Agreement or any Marketplace Policies.
- 3.8. You acknowledge and agree that it is your responsibility to ensure all Listings are up to date and accurate at all times, and you will ensure that you take all steps necessary to ensure all of your Listings remain accurate and complete at all times.
- 3.9. You acknowledge and agree that Kogan Marketplace uses tools to rate, or to allow customers to rate Seller Goods, which rating may be displayed on your product Listing.
- 3.10. When you upload content to Kogan.com Marketplace you grant us a nonexclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise any and all Intellectual Property Rights (including copyright and trademark rights) you have in the Listing content, in any media known now or in the future and for any other purpose.

4. Sales and returns

- 4.1. You will:
 - a) source, offer, sell and fulfil Seller Goods in accordance with every order placed through Kogan Marketplace and this Agreement, and all terms provided by you and displayed on Kogan Marketplace at the time of the order;
 - b) deliver Seller Goods in the quantity, at the time and to the address specified by a customer in each order;
 - c) only cancel your orders as permitted pursuant to your terms and conditions;
 - d) include all relevant warranty and return documents with Seller Goods that comply with this Agreement and any applicable Laws.
- 4.2. You acknowledge and agree that, to the extent permitted by law, the Kogan Australia Warranty Terms and Conditions will not apply to Seller Goods.
- 4.3. You must accept, calculate and process cancellations, returns, refunds, and adjustments for the benefit of customers (whether notified by the customer directly or via Kogan) in accordance with your terms and conditions and any Marketplace Policies.
- 4.4. We will not be liable to you if we cancel, or permit a customer to withdraw from, a transaction, including because we are unable to complete a transaction because our Website is unavailable.
- 4.5. You will stop or cancel orders of Seller Goods if we ask you to do so. If you have already transferred Seller Goods to a carrier or shipper when we ask you to stop or cancel an order, you will use reasonable efforts to stop or cancel delivery of that order.

You acknowledge and agree that Kogan is not a party to the sales transaction between you and the buyer. Accordingly, Kogan does not control any aspect of the transaction and does not guarantee the quality, safety or legality of items advertised by you, the accuracy of the content of your listings, or the shipping and delivery of goods by you

5. Payment

- 5.1. Customers will make payment for Seller Goods using the payment methods offered on Kogan Marketplace. We are liable for transaction fees arising out of all sales of Seller Goods on Kogan Marketplace.
- 5.2. Kogan will retain a commission as specified in your registration form in respect of each of the Seller Goods sold on Kogan Marketplace.
- 5.3. To be reimbursed the purchase price of your Seller Goods (less our commission and GST on the commission) you must update the date of dispatch of the order for your Seller Goods in our dispatch portal.
- 5.4. Provided you have satisfied clause 5.3 we will make payment to your nominated bank account on the terms specified in the registration form.
- 5.5. In circumstances where you are obligated to provide a refund as required by Law or your warranty terms and conditions, you will remit the purchase price of the relevant Seller Goods in full to the customer in accordance your warranty terms and conditions or as otherwise required by Law. You acknowledge and agree that in these circumstances, Kogan will be entitled to retain the commission received in respect of the Seller Goods.
- 5.6. If we determine that your Kogan Marketplace account has been used to engage in deceptive, fraudulent, or illegal activity, or that we will or are likely to breach a Law if we pay you, then we may, without limiting any other rights we may have withhold any payments to you, either temporarily or permanently.
- 5.7. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in Australian dollars, and all payments contemplated by this Agreement will be made in Australian dollars.

6. GST and tax invoices

- 6.1. In this clause "GST", "supply" and "tax invoice", have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 6.2. All Seller Goods offered by you on Kogan Marketplace will be expressed and displayed for a price that includes GST.
- 6.3. We are liable to pay GST on the commission we retain from the services we provide in accordance with clause 5.2.
- 6.4. You will be responsible for the collection, reporting, and payment of any GST payable from the supply of Seller Goods less the GST payable by us in accordance with clause 6.3.
- 6.5. Customers will be able to request invoices from you through their accounts with us. On request by us or from a customer, you must provide us or the customer with an invoice for Seller Goods sold at the sale price.

7. No liability and indemnity

- 7.1. You will be solely liable for all Loss suffered by Kogan as a result of a breach of this Agreement by you, or anything that you do or fail to do under or in connection with this Agreement.

- 7.2. Without limiting clause 7.1, you are solely responsible for any non-performance, non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfilment of Seller Goods, and you will reimburse us for any Loss we may incur or refunds we may provide in connection with such delivery errors.
- 7.3. You are responsible and liable for any nonconformity or defect in, or any public or private recall of or safety alert for any of Seller Goods or other products provided in connection with Seller Goods, and will reimburse us for any Loss we may incur or refunds we may provide in connection with any of Seller Goods as a result.
- 7.4. You release us and agree to indemnify, defend, and hold harmless us, our Affiliates, officers, directors, employees, representatives, and agents against any Loss which we pay, suffer, incur or are liable for, which arises directly or indirectly from or in connection with:
- a) any breach by you of your obligations in this Agreement;
 - b) any defect, failure, or malfunction of any Seller Goods, including without limitation any recall of Seller Goods, including but not limited to the Australian Consumer Law;
 - c) violation or non-compliance of any Law by you or the Seller Goods;
 - d) your failure to perform or improper performance of your obligations under this Agreement;
 - e) any breach of any of the representations made, or warranties provided, by you under this Agreement;
 - f) any actual or alleged infringement of any Intellectual Property Rights relating to Seller Goods;
 - g) Your Personnel (including any act or omission of Your Personnel or any Claim brought or directed by Your Personnel);
 - h) any financial loss or loss of goodwill or reputation, or any damages arising, directly or indirectly, out of your use of or your inability to use Kogan Marketplace; and
 - i) any personal injury, death, or property damage related to the matters in (a) to (i) above.
- 7.5. You will during the term of this Agreement and for seven (7) years after at your own cost:
- a) Effect and maintain in force with reputable insurers approved by Kogan the insurance policies described and for the amounts set out in the registration form;
 - b) Provide evidence of such insurance to Kogan upon request;
 - c) Administer the insurance policies and your relationship with its insurance at all times to preserve the benefits for Kogan under this Agreement;
 - d) Do nothing to invalidate any such insurance policy or to prejudice the entitlement of Kogan under this Agreement; and
 - e) Procure that the terms of such policy will not be altered in such a way as to diminish the benefit to Kogan of the policies as provided at the date of this Agreement.

8. Representations and warranties

- 8.1. You represent and warrant to us that:
- a) you hold and will maintain all applicable registrations and other authorisations needed to conduct your business and you are not under any restriction that prevents you conducting your business;

- b) you have the requisite right, power, and authority to enter this Agreement, perform your obligations, and grant the rights, licences, and authorisations in this Agreement;
- c) any information provided or provided by you or your Affiliates to us is accurate and complete;
- d) comply with the Marketplace Policies and all reasonable instructions and directions you receive from Kogan in connection with your performance of your obligations under this Agreement;
- e) you will, at all times in performing your obligations under this Agreement, conduct yourself in a manner that is in Kogan's best interests and will not engage in any activity or conduct that may harm or diminish the reputation of Kogan in any way; and
- f) you and all of your subcontractors, agents, and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement.

9. Confidentiality

- 9.1. During your use of the Services, you may receive information relating to us that is not known to the general public (**Confidential Information**). You agree that:
- a) all Confidential Information will remain our exclusive property;
 - b) you and your Affiliates will use and disclose Confidential Information only as is necessary for your participation in Kogan Marketplace;
 - c) you will not, and will cause your Affiliates not to, directly or indirectly (including through a third party), otherwise use or disclose Confidential Information to any other Person; and
 - d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure not expressly permitted in this Agreement.

10. Promotions

- 10.1 Kogan can, from time to time, offer promotions. The promotions are at Kogan's discretion and can include discounts or other incentives, can be offered to different categories of customers and can relate to specific products, categories of products or all products sold on the Websites, the Kogan Marketplace or both. Kogan will not necessarily give you prior notice of any promotion. Kogan will be responsible for any difference in the price paid by customers as a result of a promotion and the price you are selling the product for at the time of the promotion. Unless otherwise agreed, the commission you pay is calculated on the price of the product not including the promotion.

11. Other

- 11.1. **Closing your account:** You may close your account with us at any time by notice in writing. You must inform us the date on which you would like your Listings on Kogan Marketplace to be removed. You will fulfil outstanding orders in accordance with this Agreement and confirm your contact details which we will provide to customers seeking to contact you.
- 11.2. **Termination:** Either you or us can terminate this Agreement at any time without reason by notice in writing. If you terminate this Agreement we will follow the process set out in clause 11.1.
- 11.3. **Dispute resolution:** Any dispute which arises under, out of or in connection with this Agreement are governed by the laws of Victoria, Australia and both you and

us irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Victorian courts. Both you and us must seek to resolve any differences arising under this Agreement by direct negotiation for 10 days or such longer period as we agree with you before resorting to legal action.

11.4. **Relationship:** Nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship.

11.5. **No assignment:** You may not assign or novate any or all of your rights or obligations under this Agreement to a third party or purport to do so without our prior written consent (which may be given or withheld in our complete discretion).

11.6. **Waiver:** Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to enforce such provision or any other provision of this Agreement subsequently.

11.7. **Severability:** Any provision of this Agreement which is void or unenforceable may be severed from this Agreement without affecting the enforceability of other clauses.

In these Terms:

- (a) another grammatical form of a defined word or expression has a corresponding meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (e) headings are inserted for ease of reference only and do not affect the interpretation of these Terms.

Definitions

As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, regarding any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

"Excluded Product" means any goods or services identified in the registration form as being excluded products.

"Intellectual Property Right" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

"Kogan Marketplace" means <https://www.kogan.com/au/kogan-marketplace/> and includes any other Website owned by Kogan on which your Seller Goods are listed.

"Law" means any law, ordinance, rule, regulation, order, licence, permit, judgment, decision, or other requirement, now or in the future in effect, of any governmental authority of competent jurisdiction, and all references to applicable Laws include Australian Law.

“Listing” means any listing for Seller Goods on the Kogan Marketplace and to “List” means the act of Listing a Seller Good on the Kogan Marketplace.

“Loss” means any claim, loss, damage, settlement, cost, expense, or other liability whatsoever.

“Marketplace Policies” means any policies issued by Kogan in relation to the use of Kogan Marketplace to advertise and sell Seller Goods, including but not limited to any policies relating to listing and content guidelines and customer service standards, as amended by Kogan from time to time.

"Person" means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division, or other cognizable entity, whether or not having distinct legal existence.

"Seller Goods" means any product or service you offer for sale on Kogan Marketplace or have fulfilled or otherwise processed through the Kogan Marketplace.

“Trademark” means any trademark, Service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia, or any other source or business identifier, protected or protectable under any Laws.