

## Terms of Service – Issimo Holdings Pty Ltd

### Background

- A. Issimo Holdings Pty Ltd (ACN 163 225 054) of 21 Malcolm Street, Mansfield VIC 3722 (**Issimo**) owns and operates an e-commerce marketplace on the Website and provides related Services.
- B. The User is a user of the Website and the Services.
- C. Access to and use of the Website and the Services is governed by the Terms.

### Operative provisions

#### 1. Definitions and Interpretation

##### 1.1 Definitions

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

**Community Manager** means a User authorised by Issimo to perform certain functions in respect of the Website and who is responsible for a “Community Manager” Profile.

**Content** means any materials, information, images or other content uploaded by a User onto the Website.

**Customer** means a purchaser or potential purchaser of Goods via the Website.

**Delivery Provider** means a User who is a provider of delivery and transport services in respect of the Goods and who is responsible for a “Delivery Provider” Profile.

**Fees** means 5% of the Goods Price.

**Force Majeure** means an event of force majeure described in clause 23.

**Freight Costs** means the costs for the delivery of the Goods by a Delivery Provider.

**Goods** means the goods and products that a Vendor promotes for sale and sells to a Customer via the Website.

**Goods Price** means the price payable for the Goods ordered by the Customer as advertised by the Vendor.

**Intellectual Property Rights** includes, but is not limited to:

- (a) trademarks, patents, copyrights, processes know-how, trade secrets, registered designs, business and domain names, technology, code, algorithms, data, advertising and promotional materials and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;
- (b) all updates, enhancements, improvements, developments, fixes, replacements and modifications to or of the intellectual property listed in (a) above; and

- (c) all present and future rights conferred by statute, common law or equity in or in relation to the intellectual property listed in (a) or (b) above.

**Merchant Fees** means the merchant fees payable to Stripe.

**Profile** means a profile created under a user account by a User, and can be a “Customer” Profile, “Vendor” Profile, “Storage Provider” Profile, “Delivery Provider” Profile or “Community Member” Profile.

**Purpose** means to:

- (a) access and use the Website and the Services for personal or business needs;
- (b) create a user account and Profile;
- (c) interact with other Users as permitted by the Website;
- (d) upload Content as permitted by the Website; and
- (e) promote, sell, purchase, store or deliver Goods.

**Services** means the “Buy From” e-commerce marketplace platform provided as “software as a service” and related services provided by Issimo via the Website.

**Storage Provider** means a User who is a provider of storage facilities or services in respect of Goods before they are shipped to Customers and who is responsible for a “Storage Provider” Profile.

**Stripe** means the payment processing platform used by the Website to collect and distribute payments.

**Terms** means these terms and conditions.

**User** means a user of the Website or the Services and may include the Customer, the Vendor, the Storage Provider, the Delivery Provider or the Community Manager (as the context requires).

**Vendor** means a User who is a vendor of Goods via the Website and who is responsible for a “Vendor” Profile.

**Website** means the website which hosts the “Buy From” e-commerce marketplace platform run by Issimo and includes any computer program or software application owned and operated by Issimo running on a mobile device downloaded through a participating application store. The Website’s domain names include the following: buyfromchiltern.com.au, buyfromyackandandah.com.au, buyfromrutherglen.com.au, buyfrommtbuller.com.au, buyfromcorryong.com.au, buyfromtallangatta.com.au, buyfrommtbeauty.com.au, buyfrommyrtleford.com.au, buyfromglenrowan.com.au, buyfromnortheastvic.com.au, buyfromwanganatta.com.au, buyfrommansfield.com.au, buyfromwodonga.com.au, buyfromindigo.com.au, buyfromtowong.com.au, buyfrombeechworth.com.au, buyfrombright.com.au and buyfromalpine.com.au.

## 1.2 Interpretation

In the Terms:

- (a) a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (b) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to the Terms;
- (c) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form; and
- (d) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of the Terms.

## **2. Acceptance of these Terms**

By accessing or using the Website, providing or uploading Content or using the Services, the User accepts and agrees to be bound by the Terms.

## **3. Access to the Website**

- (a) The User acknowledges and agrees that the Website is hosted from a server controlled by Issimo and that no part of the Website will be installed on a User's hardware system (other than temporary components stored on the User's browser cache for the purposes of running the Website).
- (b) Subject to the Terms, Issimo grants to the User a non-exclusive, non-transferable, limited right to access and use the Website and the functionality and Services available on the Website solely for the Purpose.

## **4. Conditions of access**

- (a) Other than as permitted by the Terms, the User must not use or access the Website or the Services for:
  - (i) the reproduction or distribution of material on the Website in any material form;
  - (ii) re-transmission of material on the Website by any medium of communication;
  - (iii) embedding or linking the Website in other sites without Issimo's consent;
  - (iv) uploading or reposting material on the Website to any other site on the internet;
  - (v) "framing" the material on the Website with other material on any other website; or
  - (vi) re-selling or re-supplying of any part of the Services or the Website to other third parties.
- (b) The User must:
  - (i) provide Issimo with all assistance, information, facilities and services reasonably required by Issimo to enable it to perform its Services and provide the Website;
  - (ii) only upload current, complete and accurate Content;
  - (iii) not purchase the Goods for the purpose of on-selling them as a dealer, reseller or distributor;

- (iv) not use the Website if they are under 18 except with the permission of a parent or guardian; and
  - (v) other than with the prior consent of Issimo, not permit any third party to use the Website or the Services.
- (c) The User must not misuse the Website. The User must not:
- (i) use the Website in any way that could damage the reputation of Issimo or the goodwill or other rights associated with the Website or the Services;
  - (ii) upload any offensive, abusive, defamatory or inappropriate Content to the Website or treat any User or Issimo in an abusive, offensive or inappropriate manner;
  - (iii) commit or encourage a criminal offense;
  - (iv) transmit or distribute a virus, trojan, worm, logic bomb or any other material which is malicious, technologically harmful, in breach of confidence or in any way offensive or obscene;
  - (v) hack into any aspect of the Website;
  - (vi) corrupt data;
  - (vii) cause annoyance to other Users;
  - (viii) infringe upon the rights of any other person's proprietary rights;
  - (ix) send any unsolicited advertising or promotional material such as spam;
  - (x) attempt to affect the performance or functionality of any computer facilities accessed through the Website;
  - (xi) modify or copy the layout of the Website or any computer software and code contained in the Website;
  - (xii) modify or remove any copyright or proprietary notices on the Website; or
  - (xiii) reproduce, duplicate, copy, sell, resell or exploit access to the Website, use of the Service (or any portion thereof), including, but not limited to the HTML, or any visual design elements.
- (d) If, in the opinion of Issimo, a User is or may be in breach of this clause 4, it may (in its absolute discretion) remove the User's access to the Website, cease providing the Services or remove any Content uploaded by the User from the Website.

## **5. User Account and Profiles**

- (a) Each User must (other than a Customer, who may) register for a user account on the Website in order to use the Website and the Services by following the prompts for registration on the Website.
- (b) Registration for a user account requires the User to provide certain information, such as the User's name and contact details, and to create a login and password.

- (c) The User is responsible for maintaining the confidentiality and security of its login and password details and any and all activities on the Website which occur under that login and password.
- (d) The User must not share its login and password details with anyone, let anyone else access its user account or do anything that might put the security of the user account at risk.
- (e) In order to create a Profile, a User must first register for a user account. The User is permitted to add other Users to the Profile, which will give those Users access to the Profile, as permitted by the Website.
- (f) Each User that has access to a Profile is responsible for all conduct or activities performed under that Profile and must meet all obligations in these Terms applicable to that Profile.
- (g) All information entered by the User on the user account or Profile must be accurate, complete and not misleading. The User must maintain and update that information.
- (h) The User indemnifies Issimo for any losses, costs, expenses or damages that Issimo may suffer or incur if any of the information provided by the User on the user account or a Profile is not correct.

## 6. Right to suspend

- (a) Issimo may, at any time, and from time to time, modify or discontinue, temporarily or permanently, any feature or Service associated with the Website and will make best endeavours to notify the Users of any major modification or discontinuance. Continued use of the Website following any modification constitutes acceptance by the User of the modification.
- (b) Issimo may temporarily suspend access to the Website for operational purposes, including, but not limited to, maintenance, repairs or installation of upgrades. Issimo will endeavor to confine planned operational suspensions with a best effort to minimise disruption to Users.
- (c) Subject to the ACL, Issimo does not warrant or guarantee that a User's access to the Website will be uninterrupted or free from technical errors and/or bugs.

## 7. Purchasing Goods

- (a) The Website allows a Customer to place an order to purchase Goods with a Vendor. The order is an offer to the Vendor to purchase the Goods for the purchase price specified in the order and the Vendor may, in its absolute discretion, accept or decline that order.
- (b) The Vendor's acknowledgement of an order does not constitute its acceptance of that order or that a binding contract has been formed between the Vendor and the Customer (including where the order screen shows "Accepted").
- (c) A binding contract between the Customer and the Vendor for the purchase of the Goods (**Accepted Goods**) is formed when the Vendor selects "Ready" on the order screen (**Ready Date**) on the Website.
- (d) The Vendor may, prior to the Ready Date, by notice to the Customer:
  - (i) refuse to accept a Customer's order;
  - (ii) only accept to sell some, but not all, the Goods ordered;

- (iii) refuse to sell the Goods to a particular location;
- (iv) limit or cancel quantities purchased per person, per household or per order; or
- (v) cancel or amend an order,

due to a Force Majeure Event, a price or description error, insufficient stock or because the Vendor cannot meet a delivery deadline (or for any other reasonable reason). The Vendor and the Customer will negotiate the change to the order (including a change to the Goods Price).

## **8. Payment**

- (a) The parties agree and acknowledge that the Website uses Stripe as the payment processing platform.
- (b) The Customer must provide the details of a valid credit card or debit card when the Customer places an order for Goods and when prompted by the Website.
- (c) The Customer will not be charged any fees until the Ready Date but Issimo will hold the credit card or debit card details securely until then.
- (d) On the Ready Date, Issimo must ensure that:
  - (i) the Customer pays:
    - (A) the Goods Price; and
    - (B) the Freight Cost;
  - (ii) Issimo will:
    - (A) be paid the Fees; and
    - (B) pay the Merchant Fees;
  - (iii) the Vendor will be paid the Goods Price less the Fees; and
  - (iv) the Delivery Provider will be paid the Freight Cost.

## **9. Shipment and Storage**

- (a) The Vendor is responsible for safely storing the Goods (or for arranging with a Storage Provider to safely store those Goods).
- (b) After the Ready Date, the Vendor will arrange with the Delivery Provider for the Accepted Goods to be delivered to the address specified by the Customer within a reasonable time or as notified to the Customer.

## **10. Community Managers**

- (a) A Community Manager is a volunteer User authorised by Issimo to undertake certain functions in relation to the Website.

- (b) Issimo may, without notice and in its absolute discretion, remove a Community Manager as a “Community Manager” User.

## **11. Australian Consumer Law**

- (a) Issimo warrants that it will perform the Services and deliver the Website in accordance with the consumer guarantees in the ACL that apply and will deal with any failure to comply with those guarantees in accordance with the ACL.
- (b) Where liability for breach of any such guarantee can be limited, Issimo’s liability (if any) arising from any breach of those guarantees is limited, at Issimo’s choice, to one or more of the following:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## **12. Limitation of liability**

- (a) To the extent permitted by law:
  - (i) Issimo does not make any warranties or guarantees that the Website or the Services will be suitable or fit for any particular purpose, including the purpose for which they are ordinarily provided;
  - (ii) Issimo is not liable for any loss or damage related to:
    - (A) the conduct of any User (including the interaction of a User with another User);
    - (B) the Goods;
    - (C) the Content;
    - (D) errors or omissions on the Website, or linked sites on the internet;
    - (E) delays to, interruptions of or cessation of the Services provided on the Website, or linked sites; or
    - (F) a distributed denial-of-service attack, viruses or other technologically harmful material that may infect a User’s computer equipment, computer programs, data or other proprietary material due to the User’s use of the Website.
  - (iii) Issimo’s liability is capped at the total Fees payable under the Terms.
- (b) No party is liable to another for consequential or indirect loss arising due to a breach of the Terms or in tort (including negligence) in connection with the Terms including, without limitation, loss of profits, bonuses, anticipated income, anticipated cost savings or corruption or destruction of data.
- (c) Nothing in the Terms:
  - (i) affects liability for death or personal injury arising from negligence, fraudulent misrepresentation, misrepresentation as to a fundamental matter or any other liability which cannot be excluded or limited under applicable law; or

- (ii) excludes, restricts or modifies any rights or remedies a User has under the ACL or any other applicable law that cannot be excluded, restricted or modified by agreement.

### **13. Indemnity**

- (a) The User assumes liability for, and fully indemnifies Issimo and its officers, agents and employees against all costs, charges, expenses, fees, disbursements paid or incurred by Issimo in connection with or incidental to:
  - (i) any breach, default or repudiation of the Terms by the User;
  - (ii) the use of the Website or the Services by the User;
  - (iii) the exercise or attempted exercise of any right, power, privilege, authority or remedy of Issimo under the Terms, including all amounts incurred in enforcing the Terms generally.

### **14. Content and links to other websites**

- (a) The Website contains Content and links to sites on the internet owned and operated by third parties and which are not under Issimo's control.
- (b) Issimo:
  - (i) does not endorse the Content or the linked sites; and
  - (ii) is not responsible for the Content or the material contained on those linked sites.

### **15. Insurance**

Each User must obtain the insurance policies as reasonably required by Issimo from time to time.

### **16. Intellectual property rights**

- (a) Nothing in the Terms has the effect of assigning any pre-existing Intellectual Property Rights of Issimo, including Intellectual Property Rights in the Website and the Services (**Issimo IP**) and Issimo owns and will retain ownership of all Issimo IP.
- (b) The User must not directly or indirectly do anything that would or might invalidate or put in dispute Issimo IP.
- (c) Issimo does not review or pre-screen the Content and claims no intellectual property rights with respect to the Content.
- (d) The User grants to Issimo a non-exclusive, worldwide, royalty-free revocable licence to access, use and otherwise deal with the Content for the sole purpose of performing the Services and providing the Website.
- (e) If any person makes any claim alleging that the Website or the Services (or any component of the beforementioned) infringes any Intellectual Property Rights or moral rights of any person, the User must:
  - (i) promptly notify Issimo in writing;

- (ii) not make any admissions or take any action in relation to the claim without Issimo's written consent;
- (iii) permit Issimo control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
- (iv) cooperate with, assist and act at all times in accordance with the reasonable instructions of Issimo in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

#### **17. Relevant jurisdiction**

- (a) The Terms will be governed by and interpreted in accordance with the law of the state of Victoria, Australia, without giving effect to any principles of conflicts of laws.
- (b) The parties agree to the non-exclusive jurisdiction of the courts of Victoria to determine any dispute arising out of the Terms.

#### **18. Entire agreement**

The Terms constitute the entire agreement of the parties in respect of the subject matter of the Terms and supersede all prior discussions, undertakings and agreements.

#### **19. Severance**

If any provision of the Terms is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of the Terms nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

#### **20. Relationship between parties**

- (a) Nothing in the Terms constitutes the parties as partners, employees or agents of the other and no party has any authority to bind the other legally or equitably except as expressly stated in the Terms.
- (b) A party may not describe itself as agent of the other party or in any words which may indicate the existence of agency relationship between the parties.

#### **21. Miscellaneous**

- (a) The User acknowledges and agrees that Issimo may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related technology required to run the Website.
- (b) Issimo may provide the ability to integrate the Website with third party products and services that the User may use at the User's option and risk. Access to and use of any third party products and services are subject to the separate terms and conditions required by the providers of the third party products and services.
- (c) The User agrees that Issimo has no liability arising from the User's use of any integrations or arising from the third party products and services. Issimo can modify or cancel the integrations at any time without notice.

- (d) The User acknowledges the risk that information and the Content stored and transmitted electronically through the Website may be intercepted by third parties. The User agrees to accept that risk and will not hold Issimo liable for any loss, damage, or injury resulting from the interception of information.

## **22. GST**

- (a) If a party makes a supply to another party under or in connection with the Terms, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration the recipient must:
  - (i) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
  - (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- (b) If a party provides payment for or any satisfaction of a claim or a right to claim under or in connection with this agreement (for example, for a breach of any warranty or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant against, the amount of that GST.
- (c) If a party has a claim under or in connection with the Terms for a cost on which that party must pay an amount for GST, the claim is for the cost plus all amounts for GST (except any amount for GST for which that party is entitled to an input tax credit).
- (d) If a party has a claim under or in connection with the Terms whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

## **23. Force majeure**

- (a) An event of force majeure is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to:
  - (i) any supply issues in relation to materials procurement or the availability of other resources, such as subcontractors;
  - (ii) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
  - (iii) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;
  - (iv) global health emergency, pandemic or epidemic, which involves the forced closure, restriction and/or suspension of programs and services of the party affected; and

- (v) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, and which affect an essential portion of the works, but excluding any industrial dispute which is specific to the performance of the Terms.
- (b) Neither party is responsible for any failure to perform its obligations under the Terms if it is prevented from, or delayed in, performing those obligations by an event of force majeure.
- (c) Where there is an event of force majeure, the party prevented from, or delayed in, performing its obligations under the Terms must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event preventing that party from, or delaying that party in, performing its obligations under the Terms and that party must use its reasonable efforts to mitigate the effect of the event upon its performance of the Terms and to fulfil its obligations under the Terms.
- (d) Upon completion of the event of force majeure the party affected must, as soon as reasonably practicable, recommence the performance of its obligations under the Terms, should it be reasonable to do so.
- (e) An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.