

keepcool terms of sale

19 January 2017

1. Introduction

1.1. **Summary:** These terms of sale govern supply of KeepCool Devices from Imezio Limited ('we', 'us', 'our') to the customer ('you', 'your'). These terms of sale shall prevail over any terms contained in any order or offer made by you or any document used by you (which shall have no effect).

1.2. **Definitions:** In these terms of sale:

"GST" means Goods and Services Tax payable in accordance with the Goods and Services Act 1985.

"KeepCool Devices" means the sensors and receivers that you may order from the KeepCool Website.

"KeepCool Website" means <https://keepcool.co.nz>.

"KeepCool Webstore" means <https://keepcool.storbie.com>.

2. Ordering

2.1. **Contract formation:** The KeepCool Website and the information on it constitute an invitation to treat and not an offer to supply KeepCool Devices. When you order one or more KeepCool Devices, this constitutes an offer from you to buy those KeepCool Devices in accordance with these terms of sale. Only when we have accepted your order by notifying you in accordance with clause 2.3 shall a contract be formed between you and us.

2.2. **Order Process:** You may order KeepCool Devices from us by completing and submitting the order form on the KeepCool Website or on the KeepCool Webstore. You must provide all required information (including your name, physical address and email address) or we might not be able to process your order.

2.3. **Our discretion in rejecting or accepting orders:** No order shall be deemed accepted by us until we have sent you an order confirmation. We will endeavour to notify you whether we have accepted or rejected your order and, if applicable, to confirm the details of your order within 3 days. If you do not receive our notification within 5 days please contact us at orders@keepcool.co.nz. We reserve the exclusive right to accept or reject (for any reason whatsoever and in whole or in part) any order submitted by you. If we reject your order (or part of your order), any money paid by you in relation to the rejected part of that order shall be refunded and we shall have no further liability to you in relation to the rejected part of that order.

3. Prices

3.1. **Prices:** The price payable by you for KeepCool Devices ordered by you shall be the price quoted on the KeepCool Website at the time your order is submitted, together with the applicable delivery charges (which are payable in addition to the price of the KeepCool Devices). We may vary any prices on the KeepCool Website at any time and without notice to you.

- 3.2. Currency:** Except where specifically stated in relation to a particular KeepCool Device, the prices for the KeepCool Devices are stated and are payable in New Zealand dollars (NZD).
- 3.3. Taxes:** Unless otherwise specified on the KeepCool Website, the charges for the KeepCool Devices or for delivery do not include GST or any other applicable taxes, duties, Government fees, duties, levies, imposts or charges (together, '**taxes**'). All such taxes may be invoiced to you in addition to the charges at the rate applicable at the time of supply.

4. Payment

- 4.1. Payment:** You must pay the applicable charges for your order by using one of the following payment methods:
- a. Credit card, online via the KeepCool Website or Webstore.
 - b. Direct debit authority, as specified on the KeepCool Website.
- 4.2. Problems with payments:** If there is a problem with your payment (for example, if your credit card transaction is declined), we may contact you to make alternative payment arrangements.

5. Availability and cancellation

- 5.1. Availability:** All orders are subject to the availability of KeepCool Devices. If for any reason a KeepCool Device is not available, we will endeavour to notify the non-availability on the KeepCool Website. We may revise the range of KeepCool Devices or the specification of any KeepCool Device at any time and without notice to you.
- 5.2. Cancellation of orders:** You may not cancel your order once we have sent you an order confirmation. Where KeepCool Devices are listed on the KeepCool Website with an incorrect price or with incorrect information, we reserve the right to cancel your order (regardless of whether you have made payment for that order). Where you have already made payment for an order that is subsequently cancelled by us, we will refund the amount paid by you in relation to that order.

6. Delivery

- 6.1. Dispatch:** Once we have confirmed our acceptance of your order, we will endeavour to dispatch your order within 3 business days unless a different timeframe is specified in relation to a particular KeepCool Device. If we are unable to dispatch your order within this time frame we will endeavour to contact you and advise you of the expected dispatch date.
- 6.2. Delivery instructions:** You may specify delivery instructions for your order (for example, you may authorise the courier to leave the KeepCool Devices in a specified location if you will not be at the delivery address), and you acknowledge that such instructions may be followed at your risk.
- 6.3. Delivery costs:** Delivery costs are calculated based on the delivery method, number of KeepCool Devices ordered, and their weight and destination or size. Delivery costs are added to the total charges for the KeepCool Devices.
- 6.4. Deliveries:** Although we will endeavour to meet delivery timeframes where possible, all delivery timeframes are estimates only and we will not be liable for any loss, expense, or other damage caused by any delay in delivery.
- 6.5. Loss or damage in transit:** You must investigate the packaging of any KeepCool Device delivered to you to check for any damage before accepting the delivery (for example, by signing for the delivery from the courier). You must make all claims for loss or damage during transit to the carrier no later than 7 days after the delivery date (and you must notify us of any such claims).

7. Ownership, risk, and use

- 7.1. Ownership retained until payment in full:** We retain ownership of and title in the KeepCool Devices we supply to you until we have received the full price for the KeepCool Devices and the applicable delivery charges.
- 7.2. Risk:** Once your order has been delivered to you (or has otherwise been delivered in accordance with your delivery instructions), you assume full responsibility for and risk in the KeepCool Devices.
- 7.3. Use:** You must not reverse engineer, disassemble, or modify any KeepCool Device (or attempt to do any of those things), nor suffer or permit others to do the same.
- 7.4. Installation instructions:** We may provide you with instructions on how to install KeepCool Devices. If you do not feel confident in installing the KeepCool Device yourself please contact a professional to install the KeepCool Device for you. We shall not be liable for any harm or damage done to any person or property during or as a result of installation of any KeepCool Device.

8. Returns and replacements

- 8.1. Returns following delivery:** If any KeepCool Device is damaged at the time of delivery, then you may return that KeepCool Device to us by following the return requirements in clause 8.3 within 10 calendar days of your order being delivered to you.
- 8.2. Returns within 12 months:** If any KeepCool Device becomes defective during the 12 months immediately following delivery, then you may return that KeepCool Device to us by following the return requirements in clause 8.3.
- 8.3. Return requirements:** Should you wish to return a KeepCool Device, you must:
- a. contact us via email at returns@keepcool.co.nz immediately upon discovering that the KeepCool Device is damaged or defective; and
 - b. return the KeepCool Device in its original condition and packaging, in the manner instructed by us once we have received your email.
- 8.4. Returns due to change of mind:** You may not return any KeepCool Device because you have changed your mind about that KeepCool Device.
- 8.5. Responsibility for returned KeepCool Devices:** Returned KeepCool Devices are your responsibility until they reach us. We shall not be responsible for misdirected shipments or KeepCool Devices lost or damaged in transit.
- 8.6. Replacement devices:** Following our receipt of a KeepCool Device returned by you in accordance with clause 8.1 or 8.2, we will supply you with a replacement KeepCool Device provided that:
- a. you have complied with clause 7.3 in relation to that KeepCool Device; and
 - b. the KeepCool Device was not used in a manner inconsistent with our instructions or guidelines, or damaged in any way following delivery.

9. Guarantees and warranties

- 9.1. Consumer rights:** You acknowledge that all KeepCool Devices are acquired by you for the purposes of a business and that the guarantees and remedies provided under the Consumer Guarantees Act 1993 do not apply to the supply of such devices.

- 9.2. Warranties or representations:** Except for our commitment to replace damaged or defective KeepCool Devices under clause 8.6, to the maximum extent permitted by law we give no warranties and make no representations of any kind relating to the KeepCool Devices including, without limitation, any implied warranties of non-infringement, fitness for a particular purpose, merchantability, reliability, timeliness, quality, suitability, availability, accuracy or completeness. The KeepCool Devices are made available to you strictly on an 'as is' basis.
- 9.3. Information:** Although we have endeavoured to ensure that the pricing information provided on the KeepCool Website is accurate, complete, and current, to the maximum extent permitted by law we do not provide any representations or warranties as to its accuracy, completeness or currency of information, and we shall not be responsible or liable for any inaccurate, incomplete, or out-of-date information on the KeepCool Website.

10. Liability

- 10.1. Limitation:** To the maximum extent permitted by law, our liability to you (whether in contract, tort, or otherwise) for any loss, damage, or injury arising from any defect in, or non-compliance of, a KeepCool Device supplied to you by us shall be limited to the price paid by you for that KeepCool Device.
- 10.2. Exclusion:** To the maximum extent permitted by law, we will not be liable (whether in contract, tort, or otherwise) for any loss of profits, or any indirect, incidental, consequential, or economic loss or damage (howsoever caused), which you may directly or indirectly suffer in connection with your access to, use of, or reliance upon, any KeepCool Device or any information supplied to you by us.
- 10.3. Time limit for claims:** No claim arising under or in relation to these terms of trade, regardless of form, may be brought by either party more than one year after it becomes aware of the cause of action on which the claim is based.

11. General

- 11.1. Changes to these terms of sale:** We reserve the right to change these terms of sale from time to time by publishing the changed terms on the KeepCool Website. When revised terms of sale are published on the KeepCool Website, all orders submitted by you after the revised terms of sale are published shall be subject to the revised terms of sale.
- 11.2. Electronic Transactions Act:** You consent to receive communications from us electronically and agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You agree to be bound by any agreement reached through electronic communications in terms of the Electronic Transactions Act 2002.
- 11.3. Compliance with law:** You shall be solely responsible for obtaining any necessary permits under (and for compliance with) all legislation, regulations, by-laws and rules that apply to the use of any KeepCool Devices you purchase from us.
- 11.4. Disputes:** If you have any dispute with us in relation to any of the KeepCool Device, or otherwise in connection with these terms of sale, please contact us using the details on the KeepCool Website.
- 11.5. Waiver:** If we fail or delay to exercise any right or power under these terms of sale, this will not be a waiver of that right or power. Any failure or delay will not prevent us from exercising that right or power in the future.

- 11.6. **Force majeure:** We shall not be liable to you for any delay or non-performance of our contractual obligations to the extent that such delay or non-performance is caused by an event or circumstance which is outside our reasonable control.
- 11.7. **Severability:** If any provision of these terms of sale is held to be illegal, unenforceable, invalid, or void this will not prejudice or effect the legality, enforceability or validity of the remaining provisions of these terms of sale which will continue in full force and effect.
- 11.8. **Entire agreement:** These terms of sale supersede any arrangements, understandings, promises or agreements made or existing between the parties, and constitutes the entire understanding between the parties hereto with respect to the subject matter of these terms of sale.
- 11.9. **Governing law:** These terms of sale are governed by the laws of New Zealand and you submit to the non-exclusive jurisdiction of the New Zealand courts.