

# Website

## Terms and Conditions

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## **OVERVIEW**

This website is operated by Cloud Machine. Throughout the site, the terms “we”, “us” and “our” refer to Cloud Machine. Cloud Machine offers this website, including all information, tools and services available from this site to you, the user, conditioned upon your acceptance we of all terms, conditions, policies and notices stated here.

By visiting our site and/ or purchasing something from us, you engage in our “Service” and agree to be bound by the following terms and conditions (“Terms of Service”, “Terms”), including those additional terms and conditions and policies referenced herein and/or available by hyperlink. These Terms of Service apply to all users of the site, including without limitation users who are browsers, vendors, customers, merchants, and/ or contributors of content.

Please read these Terms of Service carefully before accessing or using our website. By accessing or using any part of the site, you agree to be bound by these Terms of Service. If you do not agree to all the terms and conditions of this agreement, then you may not access the website or use any services. If these Terms of Service are considered an offer, acceptance is expressly limited to these Terms of Service.

Any new features or tools which are added to the current store shall also be subject to the Terms of Service. You can review the most current version of the Terms of Service at any time on this page. We reserve the right to update, change or replace any part of these Terms of Service by posting updates and/or changes to our website. It is your responsibility to check this page periodically for changes. Your continued use of or access to the website following the posting of any changes constitutes acceptance of those changes.

Our store is hosted on OpenCart. They provide us with the online e-commerce platform that allows us to sell our products and services to you.

This document was last reviewed on 12 August 2019.

## **1. ONLINE STORE TERMS**

By agreeing to these Terms of Service, you represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of residence and you have given us your consent to allow any of your minor dependents to use this site.

You may not use our products for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

You must not transmit any worms or viruses or any code of a destructive nature.

A breach or violation of any of the Terms will result in an immediate termination of your Services.

## **2. GENERAL CONDITIONS**

We reserve the right to refuse service to anyone for any reason at any time.

You understand that your content (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. Credit card information is always encrypted during transfer over networks.

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service or any contact on the website through which the service is provided, without express written permission by us.

The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms.

### **3. GUESTS AND REGISTERED USERS**

- To become a member of the website, you must upon request provide your name and address, telephone number, a valid email address and nominate a password. If you do not provide accurate and complete details we may not be able to activate your membership or supply products to you. You agree to keep your membership details current at all times by accessing your account via the website or by contacting us on 020 466 5555 or [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz).
- You will receive an email from us immediately after you create your membership account. If you have not received such an email within 24 hours, please contact us on 020 466 5555 or [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz).
- We only permit one membership registration per email address.
- You must not use another member's account.
- You must keep your password secure and you are responsible for any activity using your membership. You agree to notify us immediately if you become aware of any security breach or any unauthorised use of your password or account.
- If you forget your password you may click on the relevant link located on the website and we will email you a new password.
- We reserve the right to terminate a member's account immediately without notice for any reason whatsoever including without limitation, where we suspect the member has breached these terms.

### **4. LEGAL CAPACITY**

- You must be eighteen (18) years of age or over to register as a member of the website or purchase products from the website.

- Any Order or purchase made by you using this website is an acknowledgement by you that you are over the age of eighteen (18) years, you accept these terms and agree that you have entered into a legal contract with us in relation to these terms.
- We reserve the right to take legal action and seek compensation for any loss or damage we may suffer as a result of a transaction entered by a minor, from the parent or guardian of a minor who causes an Order to be placed.

## **5. ACCURACY, COMPLETENESS AND TIMELINESS OF INFORMATION**

We are not responsible if information made available on this site is not accurate, complete or current. The material on this site is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Any reliance on the material on this site is at your own risk.

This site may contain certain historical information. Historical information, necessarily, is not current and is provided for your reference only. We reserve the right to modify the contents of this site at any time, but we have no obligation to update any information on our site. You agree that it is your responsibility to monitor changes to our site.

## **6. MODIFICATIONS TO THE SERVICE AND PRICES**

Prices for our products are subject to change without notice.

We reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time.

We shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Service.

## **7. PRODUCTS OR SERVICES**

Certain products or services may be available exclusively online through the website. These products or services may have limited quantities and are subject to return or exchange only according to our Return Policy.

We have made every effort to display as accurately as possible the colours and images of our products that appear at the store. We cannot guarantee that your computer monitor's display of any colour will be accurate.

We reserve the right, but are not obligated, to limit the sales of our products or Services to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis. We reserve the right to limit the quantities of any products or services that we offer. All descriptions of products or product pricing are subject to change at anytime without notice, at the sole discretion of us. We reserve the right to discontinue any product at any time. Any offer for any product or service made on this site is void where prohibited.

We do not warrant that the quality of any products, services, information, or other material purchased or obtained by you will meet your expectations, or that any errors in the Service will be corrected.

## **8. ACCURACY OF BILLING AND ACCOUNT INFORMATION**

We reserve the right to refuse any order you place with us. We may, in our sole discretion, limit or cancel quantities purchased per person, per household or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the e-mail and/or billing address/phone number provided at the time the order was made. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers or distributors.

You agree to provide current, complete and accurate purchase and account information for all purchases made at our store. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed.

For more detail, please review our [returns policy](#).

## 9. ORDERS

Please refer to our returns policy regarding returning online orders. We recommend you carefully preview any Orders before adding them to your shopping cart and proceeding with your Order. Once you have placed your Order, you cannot cancel or revoke your Order, unless expressly provided for in these Sale Terms.

- You and we may enter into a contract for the sale and supply of products by you making an offer via the website to purchase a product at the price advertised on the website by:
  - i. placing an electronic Order for the products using the website;
  - ii. you confirming the Order details in accordance with the procedure on the website;
  - iii. you making payment in full (plus any applicable delivery charges) on the website; and
  - iv. our acceptance of that offer in accordance with these Sales Terms.
  
- When entering into a sale contract via the website, you will be taken to have communicated your offer to purchase the products only when:
  - i. all requirements set out in these Sales Terms have been met;
  - ii. the electronic instruction containing the offer from you enters and is recorded in our database;
  - iii. a record is created and stored in our database; and



- iv. we receive in our account full payment from you for the product (including any applicable delivery and handling charges) and confirmation of that payment is received by our database.

You acknowledge that:

- i. the transmission of your offer or the confirmation of any payment, made through an electronic instruction may not be received by us for reasons beyond either party's control including, but not limited to, electronic failure, mechanical, software, computer, or telecommunications, or the omission or failure of third party website providers or systems;
- ii. to the extent permitted by law, we are not liable to you in any way for any loss or damage at all however caused, arising directly or indirectly in connection with the transmission of an electronic instruction through the website, or any failure to receive an electronic instruction for whatever reason;
- iii. we may act on and process all completed electronic instructions transmitted or issued through the website without further consent from or reference to you; and
- iv. we may treat an electronic instruction as authentic and is under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.
- v. You will receive an email from us immediately after you have confirmed your Order and made payment. If you have any questions regarding your Order you may contact us on 020 466 5555 or [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz).
- vi. If your Order is not accepted by us, we will notify you by telephone or email and arrange for a full refund of any payment made by you to be processed.

- vii. We may, in our sole and absolute discretion, accept or reject any offer made by you for any reason (or no reason), including an error in the advertised price for, or description of, the products on the website, or an error in your Order.
- viii. We endeavour to ensure that any representations made about stock availabilities are accurate to the last known stock level. You acknowledge that stock availabilities are subject to change. If we cannot supply a particular product, we will notify you by telephone or email as soon as possible.
- ix. We will be deemed to have accepted your Order when your Order is delivered to your specified delivery address or on collection of your Order from us.

## **10. ORDER ENQUIRIES**

If you have any query about the progress of your Order please contact us on 020 466 5555 or [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz). Please have your Order number handy as shown on the email confirmation.

## **11. PRICE**

- Prices shown are in New Zealand dollars and include GST where applicable. Prices do not include any costs associated with set-up or installation, which shall be your responsibility. Prices may not include delivery and handling charges. We may vary any prices on this website at any time without notice to you.
- Each published saving in respect of a product is by reference to the recommended retail price of the manufacturer or our normal ticketed price.
- Images of products shown without any advertised price beside that image are not offered for sale.
- Unless otherwise stated, any accessories, shown in any image of products are not included in the price.

- We reserve the right to correct any errors.

## **12. PAYMENT**

- All payments must be made by you in full.
- Two methods of payment are accepted:
  1. Cash, eftpos, or credit card in store.
  2. Via the Paystation secure payment gateway facilities accessible via the website and will be subject to any terms and conditions of these providers or by authorising us to charge your credit card account for the total price of the products ordered and the applicable delivery fees (if any) at the time the products are dispatched.
- The Paystation secure payment gateway facilities accessible via the website will be subject to any terms and conditions of these providers or by authorising us to charge your credit card account for the total price of the products ordered and the applicable delivery fees (if any) at the time the products are dispatched.
- The Paystation website employs the following technologies as a secure payment way:
  1. PCI DSS Level 1 Service Provider to ensure that card holder data is secured.
  2. Tokenisation to store and encrypt cardholder data.
  3. Encryption via SHA 256-bit SSL.
- To the extent permitted by law, we will not be responsible for any damages or consequential losses (whether direct or indirect) suffered by you where a credit card or TNS account is fraudulently used or is used in an unauthorised manner.
- 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. You will be liable for all debt collection costs where you fail to make payment for any order when payment is due.

### **13. THIRD-PARTY LINKS**

- Certain content, products and services available via our Service may include materials from third-parties.
- Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties.
- We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

### **14. SUPPLY AND DELIVERY**

- Subject to your compliance with these Sales Terms and our acceptance of your Order, we will sell and supply the products to you as shown on your Order confirmation.
- Products may not be available for immediate delivery. We will endeavour to deliver your Order to the address you nominate in your Order within ten (10) days of the date you placed your Order.
- Extremely popular or rare products may not be in stock and will be required to be ordered. You acknowledge and agree that your Order for any item that is in popular demand or a rare product not currently in stock may take up to ten (10) weeks to be delivered to you from the date you placed your Order. This timeframe is the average manufacturing lead time required by suppliers. We will contact you on or about the time we receive your Order to notify you of the indicative delivery date and ask if you would prefer a refund or replacement product of equal value.

- When you complete your Order you will be prompted to select whether you wish to collect your Order from our store or to have the order delivered to an address specified by you.
- Other than in respect of Orders for regional or remote areas, if we give you notice that it will be unable to deliver your Order within 10 business days of receipt of your Order due to lack of stock you may cancel your Order without charge, and we will, upon request to arrange for a full refund of any payment made by you for that Order to be processed.
- Delivery times may be greater than 3 business days for regional or remote areas.

## **15. DELIVERY BY POST**

- The terms of this clause apply where you select to have your goods delivered to a specified address.
- The delivery address must be an address within New Zealand and cannot be a freight forwarding location.
- On receipt of your order, your order will be dispatched to your specified delivery address and received generally within 3 business days of the date you placed your order.
- If you order large or bulky items, we will contact you by telephone or email to arrange with you a suitable time for delivery.
- You will be required to be available in person to accept all deliveries.
- If you wish to change the delivery date or delivery address you must let the us know at or before 2:00 pm on the date you place the Order.
- We will use our best endeavours to deliver your Order within any stated timeframes for dispatch; however we do not warrant that these timeframes will always be met, as many factors may affect these timeframes.
- You must advise at the time you place your Order via the website, or later when you discuss delivery with us, of any difficulties that may be involved in the delivery (such as remote rural locations, restricted access, stairs or narrow entries). If you do not state the situation correctly and on arrival the delivery

contractor deems it to be a difficult location, or a rural location you will be liable for any extra charges including redelivery fees and the cost of an extra person to assist.

- We cannot accept responsibility for delivery failures or delays by our third party delivery contractor.

## **16. USER COMMENTS, FEEDBACK AND OTHER SUBMISSIONS**

- If, at our request, you send certain specific submissions (for example contest entries) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, 'comments'), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that you forward to us. We are and shall be under no obligation (1) to maintain any comments in confidence; (2) to pay compensation for any comments; or (3) to respond to any comments.
- We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service.
- You agree that your comments will not violate any right of any third-party, including copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Service or any related website. You may not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. We take no responsibility and assume no liability for any comments posted by you or any third-party.

## 17. DAMAGED PRODUCTS AND ACCEPTABLE QUALITY

- If any product ordered by you arrives damaged or is not of acceptable quality you may have:
  - a) legal rights and remedies under the New Zealand Consumer Guarantees Act 1993 (“CGA”); or
  - b) the right to have the product repaired or replaced or to receive a refund of the price paid by you for the product.
- Please refer to our Returns Policy for more information on our policy regarding online orders when you have changed your mind or the product was not what you expected.
- If your Order arrives damaged or is not of acceptable quality, please contact us on 020 466 5555 or [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz).

## 18. PERSONAL INFORMATION

Your submission of personal information through the store is governed by our [Privacy Policy](#).

## 19. ERRORS, INACCURACIES AND OMISSIONS

Occasionally there may be information on our site or in the Service that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times and availability. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information in the Service or on any related website is inaccurate at any time without prior notice (including after you have submitted your order).

We undertake no obligation to update, amend or clarify information in the Service or on any related website, including without limitation, pricing information, except as required by law. No specified update or refresh date applied in the Service or on any

related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

## **20. PROHIBITED USES**

In addition to other prohibitions as set forth in the Terms of Service, you are prohibited from using the site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

## **21. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

We do not guarantee, represent or warrant that your use of our service will be uninterrupted, timely, secure or error-free.

We do not warrant that the results that may be obtained from the use of the service will be accurate or reliable.

You agree that from time to time we may remove the service for indefinite periods of time or cancel the service at any time, without notice to you.



You expressly agree that your use of, or inability to use, the service is at your sole risk. The service and all products and services delivered to you through the service are (except as expressly stated by us) provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.

In no case shall Cloud Machine, our directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of any of the service or any products procured using the service, or for any other claim related in any way to your use of the service or any product, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the service or any content (or product) posted, transmitted, or otherwise made available via the service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.

## **22. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Cloud Machine and our parent, subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third-party due to or arising out of your breach of these Terms of Service or the documents they incorporate by reference, or your violation of any law or the rights of a third-party.

### **23. SEVERABILITY**

In the event that any provision of these Terms of Service is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms of Service, such determination shall not affect the validity and enforceability of any other remaining provisions.

### **24. TERMINATION**

The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this agreement for all purposes.

These Terms of Service are effective unless and until terminated by either you or us. You may terminate these Terms of Service at any time by notifying us that you no longer wish to use our Services, or when you cease using our site.

If in our sole judgment you fail, or we suspect that you have failed, to comply with any term or provision of these Terms of Service, we also may terminate this agreement at any time without notice and you will remain liable for all amounts due up to and including the date of termination; and/or accordingly may deny you access to our Services (or any part thereof).

### **25. ENTIRE AGREEMENT**

The failure of us to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision.

These Terms of Service and any policies or operating rules posted by us on this site or in respect to The Service constitutes the entire agreement and understanding between you and us and govern your use of the Service, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service).

Any ambiguities in the interpretation of these Terms of Service shall not be construed against the drafting party.

## **26. GOVERNING LAW**

These Terms of Service and any separate agreements whereby we provide you Services shall be governed by and construed in accordance with the laws of 240 Peachgrove Road, Hamilton, 3214, New Zealand.

## **27. CHANGES TO TERMS OF SERVICE**

You can review the most current version of the Terms of Service at any time at this page.

We reserve the right, at our sole discretion, to update, change or replace any part of these Terms of Service by posting updates and changes to our website. It is your responsibility to check our website periodically for changes. Your continued use of or access to our website or the Service following the posting of any changes to these Terms of Service constitutes acceptance of those changes.

## **28. CONTACT INFORMATION**

Questions about the Terms of Service should be sent to us at [sales@cloudmachine.co.nz](mailto:sales@cloudmachine.co.nz).