

Edillon 2 – As at 16 July 2013 Terms & Conditions

Application

These terms and conditions shall apply to every order of goods and/or services (products) made by Marda Investments Pty Ltd ACN 001 238 633 trading as Race Dental Laboratory (we/us/our) to the customer who places an order with us (you/your) (even if they are not attached to any particular quote or order).

Quote, Order and Acceptance

If we provide you with a quote it is valid only for the period of time specified in the quote or 30 days from the date of the quote, whichever is the lesser, and only in respect of the matters set out in the quote. Our quotes are confidential and you must not disclose the information in our quotes to any other person without our prior written consent. A quote given by us is an invitation for you to trade with us. It shall not constitute an offer by us to you. You may use the quote to submit an order to us. Prices given in any quote are applicable to that quote only and will not apply in any other instance, unless confirmed in writing by us. If you are given a quote and instruct us to proceed, you are taken to have submitted an order to us on the terms of the quote. We are not obliged to accept any order. Acceptance of an order only occurs where we accept the order (which may be done in writing, verbally or by us commencing to fulfill the order).

Change of Order

Once an order has been accepted by us, it can only be changed or cancelled with our consent and in respect of which additional charges may apply as determined by us. Each order constitutes a separate and independent agreement. Subject to these terms and conditions, any action taken in respect one order does not automatically affect any or all other orders.

Authority to Place Order

You agree that we are entitled to assume that anyone on behalf of you (including your employees) who places an order with us has full power and authority to bind you irrespective of whether or not such person followed your internal procedures before placing the order and you agree to be bound by the acts or omissions of such persons.

Your Obligations

You must promptly provide all instruction, information and documentation reasonably requested by us relating to the order (including, for clarity, a laboratory card) and it is your responsibility to ensure same are accurate and complete in all material respects. We are not liable for any loss or damage of any kind suffered by you as a result of any failure or delay by you in respect of the foregoing and we are entitled to a reasonable extension of any timeframe applicable to our obligations as a result of such failure or delay. It is your responsibility to ensure that the contact details we have about you including your address and delivery details are correct and up to date at all times.

Price and Products

The price and description of the products you may offer to purchase from us are described in our price list. We may change any aspect of the price list at any time without prior notice. It is your responsibility to check the price list before placing your order with us.

Descriptions

Any description of our products including any specifications, illustrations, drawings, data, dimensions and weights are approximate only and are given by way of identification only. The use of that description does not constitute a sale by description and does not form part of our contract with you unless we say so in writing. You are responsible for ensuring that the product ordered is suitable for its intended use by you and to the fullest extent permitted by law we are not liable to you for any product you order which is unsuitable for your intended use.

Payment, Interest and Merchant Fee

If we agree to provide you with credit, our payment terms are strictly 30 days from the date of the invoice and if credit is not provided or is terminated, suspended or you are over your credit limit, payment is due on the lesser of 30 days from the date of invoice or the date specified by us. We may issue an invoice for part of the products supplied from time to time. If any payment is dishonoured, you must pay the additional bank charges. If any other amount is payable by you to us under these terms and conditions, it is payable within the time period specified for payment or, if no time period is specified, then within 14 days of demand. All times for payment are of the essence. Without prejudice to our rights, interest shall apply to any overdue amount at the rate of 9% per annum calculated daily and is payable on demand. In addition to the amount payable, we may charge you an account processing fee for all credit card payments up to 3% of the total value of the invoice.

Credit Reporting

We may give information about you or your business to a credit reporting agency for the purpose of obtaining a credit code (or similar) report, and/or to allow any credit reporting agency to create or maintain a credit information file about you or your business. You hereby consent to us disclosing your information to any credit reporting agency as outlined above.

GST

Unless otherwise stated, our prices are shown exclusive of goods and services tax (GST). You must pay the applicable amount of GST in addition to the amount payable at the same time as the amount to which it relates is payable. If GST is payable, the invoice issued by us to you will be a Tax Invoice.

In these terms and conditions, "Tax Invoice" means an invoice issued in conformity with the GST Act; and "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the regulations thereunder.

Account Limit

If we agree to provide you with credit, we reserve the right to terminate or suspend the provision of credit or introduce or change the amount of credit available to you at any time in our sole discretion. If a credit limit is introduced or agreed to, this is solely for our internal purposes and the fact that credit may be given to you beyond this limit does not prejudice our rights to seek payment of the full amount owing irrespective of whether or not notification was given to you of the credit limit being exceeded. It is your responsibility to monitor the amount of credit being given to you.

Delivery and Delivery Costs

Delivery takes place on the earlier of the time our product passes into your (or your agent's) possession, or the time when we deliver same to the relevant delivery address. Unless otherwise stated, our prices are shown exclusive of delivery costs. We reserve the right to charge for the costs we incur in delivering our product to you in addition to all other amounts payable. Delivery costs are payable at the same time as the payment for the products delivered is due. Unless we make other arrangements with you, our product is delivered direct to the delivery address listed on your account (and delivery to that address is sufficient delivery). If you request that we deliver our product to another address, we may charge you an additional fee.

Although we will use reasonable endeavours to provide the product to you by the due date for delivery, this time is not of the essence. If supply of the product is prevented, delayed or hindered directly or indirectly by circumstances beyond our reasonable control then, at our option, either the delivery time shall be extended until the effect of the delaying cause has ceased or we may cancel the order. You are not entitled to cancel the order for the resultant delay. We are not liable to you for any loss or damage of any kind you suffer arising out of any failure by us to provide the product on the agreed or specified date or within a reasonable time or for the resultant delay or cancellation of the order.

Title and Risk

Risk of loss, damage or destruction to our product passes to you at the time of delivery. Title though only passes to you once payment in full for the relevant product has been made.

Infection Control

We warrant that our products comply with the Australian Dental Association Inc's Guidelines for Infection Control and the Dental Board of Australia's Guidelines on Infection Control.

PPS

(a) Each contract between you and us constitutes a "security agreement" for the purposes of the PPS; (b) For the purposes of s 115 of the PPS, you agree that to the fullest extent permitted by law, you have agreed to: (i) contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142, 143 and 144 of the PPS; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS; (c) to the fullest extent permitted by law, you hereby waive your rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.

In these terms and conditions, "PPS" means the Personal Property Securities Act 2009 (Cth) and the regulations thereunder.

Inspection

For materials we provide to you, you should inspect the product immediately upon delivery. To the fullest extent permitted by law, you must report to us in writing any damage or incorrect supply which must be received by us within 3 days of delivery otherwise we may refuse any claim you make.

Warranties

Subject to the warranty conditions set out below (and any manufacturer's warranty that the relevant manufacturer may provide), we provide the following warranties against faults or defects (calculated from the date of our invoice) in respect of the following products we provide to you:

- 3M Lava Zirconia: 15 year warranty on framework; 5 year warranty on complete restoration
- 3M Lava Ultimate: 10 year warranty
- 3M Lava Plus: 10 year warranty
- e.max Press: 12 month warranty
- e.max CAD: 5 year warranty
- Opalite: 10 year warranty
- PFM Standard and Premium: 6 year warranty
- Layered Zirconia: 10 year warranty on framework; 1 year warranty on complete restoration
- Full Gold Crown: 6 year warranty

Warranty Conditions

- (1) You must notify us in writing at the address identified below immediately when the fault or defect arises.
- (2) We shall alone determine whether the product(s) are faulty or defective.
- (3) You will not be able to rely upon the warranties in this document unless you have first paid all amounts you owe us for any products.
- (4) If we accept or determine that you have a valid warranty claim, and subject to point (5) below, we will bear all of your reasonable and proximate expenses incurred as a result of making the warranty claim. You must inform us in writing at the address identified below within 21 days from when you first make a warranty claim of all such expenses and provide us with copies of all receipts and invoices prior to us reimbursing you for any expenses. You are responsible for all other costs of making a warranty claim.
- (5) We will not be responsible for any courier, transport or freight related costs whatsoever associated with the return of any products or part thereof to us where such costs have not first been approved by us. We reserve the right to first inspect any products or part thereof and decide how, if at all, the product or part thereof is to be returned to us. Any unapproved courier, transport or freight related costs will be at your expense. For clarity, you bear the risk of loss or damage to the product until the time of delivery.
- (6) This warranty is not transferable.

Australian Consumer Law

If you acquire goods from us as a "consumer" within the meaning of that term in the Australian Consumer Law, then the following paragraph applies:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Any rights you may have under any warranty specified herein are in addition to other rights and remedies under law in relation to the products. Nothing in these terms and conditions shall exclude or modify any legal rights you may have under the Australian Consumer Law or otherwise which cannot be excluded or modified at law. [Please note that this wording does not exclude our right to rely on section 64A contained in schedule 2 of the Competition and Consumer Act 2010 (Cth) where appropriate.]

Contact details if you wish to make a warranty claim

For more information or to make a warranty claim, please telephone Race Dental Laboratory support on 02 9490 2500 or write to us at 12 Waterloo Rd Macquarie Park NSW 2113. Our website and email details are as follows: www.racedental.com.au support@racedental.com.au

Limitation of Liability – General

To the fullest extent permitted by law: (a) we are not be liable to you for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of our obligations irrespective of whether or not we were made aware of the possibility of such loss; (b) all implied warranties, terms and conditions in relation to the product including those implied by use, trade, custom or otherwise are hereby excluded.

Limitation of Liability – Products

To the fullest extent permitted by law (but subject to the Australian Consumer Law and any applicable express warranty in these terms and conditions), in respect of any products we provide to you: (a) your only remedy in respect of a damaged or defective product covered by a warranty we give is limited to the terms of that warranty; (b) if despite the foregoing limitation we are nonetheless held to be liable to you, then our maximum liability to you for any reason whatsoever, whether arising in tort or contract or otherwise, is limited, as selected by us, to either providing the product again, the payment of the cost of having the product supplied again or repairing the product.

Without derogating from the foregoing, our maximum liability to you for any reason whatsoever is strictly limited to the amount paid by you to us in respect of an order.

Indemnity

You indemnify us from and against all claims, demands, suits, proceedings, costs, liability, loss, damage and expense (including legal costs on a full indemnity basis and any commissions or other expenses we pay to any debt collection agency we retain to recover or attempt to recover the monies you owe to us), suffered, paid or incurred by us arising from any breach by you of these terms and conditions or any order.

Your Relationship with Us

Nothing in these terms and conditions creates any relationship of employment, agency, joint venture or partnership between you and us.

Suspension

If you default or fail or delay in performing your obligations then in addition to and without prejudice to any of our other rights or remedies (including exercising a right of termination after suspension), we may suspend the

performance of our obligations until such breach is rectified without being liable to you for any loss or damage of any kind suffered by you as a result of such suspension. We are entitled to a reasonable extension of any timeframe applicable to our obligations as a result of such suspension.

Termination

If a party (defaulting party): (a) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or external controller appointed to it; (b) becomes bankrupt, insolvent or is wound-up; (c) has a resolution passed for its winding-up, commits an act of insolvency or bankruptcy; (d) enters into any scheme or arrangement with its creditors; (e) breaches an essential term of the order; (f) breaches a term of the order that is not capable of remedy; or (g) subject to the foregoing, breaches a term of the order that is capable of remedy but is not so remedied within 14 days of written demand; then the other party by written notice to the defaulting party may terminate the relevant order immediately.

Effect of Termination

Termination shall not affect any provision of the order expressed or capable of operating or having effect subsequent to termination and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination.

Cancellation by Us

We may cancel an order at any time before the product is supplied to you by giving notice to you in which case we will repay any sums paid by you in advance to us in respect of the relevant product.

Intellectual Property

You do not receive any right, title or interest in the intellectual property rights in our product. If we source, produce or manufacture any product samples or prototypes specifically for you, you do not acquire any intellectual property rights in such samples and prototypes.

We are not liable to you for any infringement or unauthorized use of any intellectual property rights connected with these terms and conditions or an order.

In these terms and conditions, "intellectual property rights" include any copyright, moral rights, trademark, registered design, patent, trade and business names, inventions, know-how, improvements, discoveries and confidential process and includes without limitation artistic works, images, illustrations and photographs and any adaptation or concept relating to it.

Database

We may store information provided by you to us, including your contact details, on our internal database. You have no right to view or otherwise access that database. To the fullest extent permitted by law, we may use any information provided by you to us to conduct our business.

Inconsistency and Variation

We may vary these terms and conditions from time to time, in which case those new terms and conditions shall apply to every new order after you are notified in writing of the new terms and conditions. Subject to the foregoing and any other provision of the order, any variation, amendment or consent to departure by any party from the order will have no force or effect unless agreed in writing by us.

If there is any inconsistency between these terms and conditions (general) and any other details of the order (specific), the specific details of the order prevail to the extent of the inconsistency.

General

In respect of these terms and conditions and the order: (a) we may in our sole discretion assign, subcontract or sublicense any or all of our obligations from time to time; (b) you cannot transfer or assign your rights or obligations without our prior written consent; (c) the failure to exercise or delay in exercising by any party of any of its rights shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party; (d) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the terms and conditions or an order or any part of them; (e) unless otherwise specified by us, an order has no set form and could, for example, comprise emails exchanged between you and us or be an order by phone or fax or a combination of same; (f) subject to these terms and conditions, the rights of a party are not exclusive of any rights provided by law; (g) any provision or part of a provision which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction; (h) subject to these terms and conditions, any variation, amendment or consent to departure by any party from these terms and conditions or an order, shall have no force or effect unless agreed in writing between you and us; (i) the terms and conditions, relevant order and the laboratory card express and incorporate the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither party shall, after the order has been accepted, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the terms and conditions and the relevant order; (j) if by reason of any fact, circumstance, matter or thing beyond our reasonable control, we are unable or unwilling to perform in whole or in part any obligation, we shall be relieved of that obligation to the extent and for the period that we are so unable or unwilling to perform and are not liable to you for any loss or damage of any kind suffered by you arising out of such inability or unwillingness to perform; (k) they shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia; (l) any legal action or proceedings with respect to the terms and conditions and/or order against any party or any of its property and assets may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

Interpretation

Unless the context otherwise requires: (a) headings, boldings and underlines are for convenience only and do not affect the interpretation of these terms and conditions or an order; (b) words importing the singular include the plural and vice versa; (c) reference to a "person" includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (d) reference to any statute or regulation includes all statutes and regulations varying, consolidating or replacing them; reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute; (e) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation; (f) all references to "\$" or "dollars" are to the lawful currency of Australia; (g) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.