

## GENERAL TERMS AND CONDITIONS OF SALE

(AUSTRALIA AND NEW ZEALAND)

**Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. Consumers in Australia are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. They 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.**

*Last Revised on 29<sup>th</sup> October 2020*

Welcome to the General Terms and Conditions of Sale (these “**Terms**”) for the purchase of Products (as defined below) via <https://products.theoceancleanup.com/> (the “**Website**”), operated on behalf of The Ocean Cleanup Projects B.V. (“**Company**”, “**we**” or “**us**”).

These Terms govern your purchase of the Products. Please read these Terms carefully, as they include important information about your legal rights. By purchasing a Product, you are agreeing to these Terms. If you do not understand or agree to these Terms, please do not purchase a Product.

For purposes of these Terms, “**you**” and “**your**” means you as the purchaser of the Products. If you purchase the Products on behalf of a company or other entity then “**you**” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) you agree to these Terms on the entity's behalf.

You must be at least 13 years of age to purchase Products. If you are over 13 years of age but under 18 years of age, your parents or legal guardian must read and agree to these terms.

**Please note that Section 4 contains an arbitration clause and class action waiver. By agreeing to these Terms, you agree (a) to resolve all disputes with us through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and (b) that you waive your right to participate in class actions, class, consolidated or representative actions or class, consolidated or representative arbitrations. You have the right to opt-out of arbitration as explained in Section 4.**

### **1. ORDERS FOR PRODUCTS**

1.1 **Payment.** The Website may permit you to purchase certain physical products (“**Products**”). You acknowledge and agree that all information you provide with regards to a purchase of Products, including, without limitation, credit card, PayPal, or other payment information, is accurate, current and complete. You represent and warrant that you have the legal right to use the payment method you provide to us or our payment processor, including, without limitation, any credit card you provide when completing a transaction. We reserve the right, with or without prior notice and in our sole and complete discretion, to (a) discontinue, modify, or limit the available quantity of, any Products, and (b) refuse to allow any user to purchase any Product or deliver such Products to a user or a user designated address. When you purchase Products, you (a) agree to pay the price for such Products as set forth on the Website, and all applicable taxes in connection with your purchase (the “**Full Purchase Amount**”), and (b) authorize us to charge your credit card or other payment method for the Full Purchase Amount. Unless otherwise noted, all currency references are in U.S. Dollars. All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable. Payment can be made by credit card, debit card, or through

PayPal or other means that we may make available. Orders will not be processed until payment has been received in full, and any holds on your account by PayPal or any other payment processor are solely your responsibility.

- 1.2 Accounts. When you purchase a Product, you have the opportunity to create an account with us (“**Account**”) to receive more information about your Product. If you chose to create an Account, you agree to provide us with accurate, complete and updated information for your Account. You are solely responsible for any activity on your Account and for maintaining the confidentiality and security of your password. We are not liable for any acts or omissions by you in connection with your Account. You must immediately notify us at [info@theoceancleanup.com](mailto:info@theoceancleanup.com) if you know or have any reason to suspect that your Account or password have been stolen, misappropriated or otherwise compromised, or in case of any actual or suspected unauthorized use of your Account. Please note that, because your Account is specific to the Products you purchase, if you return the Products, we may choose to delete your Account.
- 1.3 Promotional Codes. We may offer certain promotional codes, vouchers, referral codes, discount codes, coupon codes or similar offers (“**Promotional Codes**”) that may be redeemed for discounts on specified Products, subject to any additional terms that the Company establishes. You agree that Promotional Codes: (a) must be used in a lawful manner; (b) must be used for the intended audience and purpose; (c) may not be duplicated, sold or transferred in any manner, or made available by you to the general public (whether posted to a public forum, coupon collecting service, or otherwise), unless expressly permitted by the Company; (d) may be disabled or have additional conditions applied to them by the Company at any time for any reason without liability to the Company; (e) may only be used pursuant to the specific terms that the Company establishes for such Promotional Code; (f) are not valid for cash or other credits or points; and (g) may expire prior to your use.
- 1.4 Purchase Limits; Changes and Pricing. You are only permitted to purchase ten (10) Products through the Website. Should you wish to purchase more than ten (10) Products, please contact us at [info@theoceancleanup.com](mailto:info@theoceancleanup.com). The Company may, at any time, revise or change the pricing, availability, specifications, content, descriptions or features of any Products. While we attempt to be as accurate as we can in our descriptions for the Products, that information was provided on an "as is" and "as available basis and we do not make any representation or warranty of any kind that as to the accuracy, completeness, reliability, or currency of the information. While we will make all reasonable attempts to provide clear and accurate information to consumers about the availability of goods, the inclusion of any Products for purchase through the Website at a particular time does not imply or warrant that the Products will be available at any other time. We reserve the right to change prices for Products displayed on the Website at any time, and to correct pricing errors that may inadvertently occur (and to cancel any orders in our sole discretion that were purchased with pricing errors). All such changes shall be effective immediately upon posting of such new Product prices to the Website and/or upon making the customer aware of the pricing error.
- 1.5 Order Acceptance; Shipment. Once we receive your order for a Product, we will provide you with an order confirmation. Your receipt of an order confirmation, however, does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell; we are simply confirming that we received your order. We reserve the right at any time after receiving your order to accept or decline your order for any reason and in our sole discretion. If we cancel an order after you have already been billed, then we will refund the billed amount. If delivery of the Product is delayed, or if an order cannot or can only partially be executed, you will receive a notice of the delay within thirty (30) days after having placed the order. In such case, you may cancel your order

at no cost to you. Title and risk of loss for any purchases of physical products pass to you upon delivery to you. We reserve the right to ship partial orders (at no additional cost to you), and notwithstanding anything to the contrary in Section 3.1, the portion of any order that is partially shipped may be charged at the time of shipment. All orders are shipped using one of our third party couriers. Online tracking may be available at our courier's website (for example, FedEx), though we make no warranties regarding its availability because it is not under our control. While deliveries may be scheduled for a specified arrival, we cannot guarantee delivery by any specific date or time.

- 1.6 No Delivery to Children. In furtherance of our policy of not collecting personal information from persons under the age of 13, you are not allowed to give the Company the personal information of any persons under the age of 13 for delivery or shipping purposes or any other reason.
- 1.7 Return, Refund and Exchange Policy. You shall inspect the Products immediately after delivery and shall notify the Company of any damage to or complaint about the Products within 24 hours after delivery via [info@theoceancleanup.com](mailto:info@theoceancleanup.com). You have the right to return the Products within fourteen (14) days of receipt by you of such Products. To initiate a return, you must email us at [info@theoceancleanup.com](mailto:info@theoceancleanup.com). Once such email is received, we will send a confirmation of receipt of the return request. You shall then return the Products with all delivered accessories in the original condition and packaging in which you received them and in accordance with our instructions. Products must be shipped to us within the fourteen (14) day return window. You shall be liable for any damage caused to the Products while in your possession. You shall be responsible for the costs of returning the Products unless we expressly agree to bear such costs. Upon receipt of the returned Products, we shall reimburse you for all payments made to us relating to your purchase of the Product, but excluding the amount of any Promotional Codes applied to your purchase. You are responsible for paying all fees, including shipping and handling, related to the return of the Products.

## 2. MANUFACTURER'S WARRANTY

- (a) The Company warrants the Products against breakage due to material or workmanship defect for two (2) years from the date of purchase with a valid proof of purchase. This warranty does not cover scratched lenses and frame, slight discoloration, any normal wear and tear, or defects that are caused by an act or omission of the consumer. Additionally, any alterations of the Products (i.e. sunglasses fit with prescription lenses) will void warranty coverage.
- (b) The warranty applies to the Products only if such Products: (a) valid proof of purchase is demonstrated; (b) have not been subjected to accident, misuse, abuse, improper service; and (c) claims are made within the warranty period and in accordance with the process described herein.
- (c) To make a warranty claim, please contact us via [info@theoceancleanup.com](mailto:info@theoceancleanup.com), to provide a description of the damage, if possible including photos. Upon receipt of the claim, we will contact you with follow up questions or further instructions if necessary. Under this warranty against defects, the Company will repair, replace or refund the Product. If you are required to return the product to the Company and the product is defective, you are entitled to a refund of any reasonable shipping charges to return the defective product. The Company will return the repaired or replaced product at no charge.
- (d) This warranty exists in addition to your rights and remedies available under the Australian Consumer Law.

### 3. DISCLAIMERS, LIMITATIONS OF LIABILITY

- 3.1 Disclaimers. Subject to clause 3.3 and 3.4 the limited warranties provided herein are the exclusive warranties given by Company and supersede any prior, contrary or additional representations, whether oral or written. ANY IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE AND NON-INFRINGEMENT THAT APPLY TO ANY PRODUCTS DESCRIBED ABOVE ARE LIMITED IN DURATION TO THE PERIODS OF EXPRESS WARRANTIES GIVEN ABOVE FOR THOSE SAME PRODUCTS. THE COMPANY HEREBY DISCLAIMS AND EXCLUDES THOSE WARRANTIES THEREAFTER, EXCEPT TO THE EXTENT PROHIBITED BY LAW. THE COMPANY ALSO HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY PRODUCT, INCLUDING BUT NOT LIMITED TO: (A) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF THE COMPANY OR ITS SUPPLIERS (WHETHER ACTIVE, PASSIVE OR IMPUTED); AND (B) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY EQUIPMENT. This disclaimer and release shall apply even if the express warranty set forth above fails of its essential purpose.
- 3.2 Subject to clauses 3.3 and 3.4, IN NO EVENT WILL THE COMPANY, ITS SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS (THE “**COMPANY ENTITIES**”) BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS WARRANTY OR THE PURCHASE, USE, REPAIR OR MAINTENANCE OF THE PRODUCTS, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, ECONOMIC LOSS, LOSS OF PROPERTY OR PROFITS, LOSS OF ENJOYMENT OR USE, OR OTHER CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER. THE COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE OR INJURY INCURRED DURING, OR AS A RESULT OF, ANY REPAIR OR ATTEMPTED REPAIR OF THE PRODUCTS OTHER THAN AN AUTHORIZED COMPANY TECHNICIAN. THE FOREGOING LIMITATIONS DO NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. THE COMPANY ENTITIES’ TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED SHALL NOT EXCEED THE AMOUNT YOU PAID THE COMPANY ENTITIES, IF ANY, FOR THE PRODUCTS GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 3.3 To the extent that you acquire the products as a "consumer" (as defined in the Australian Consumer Law) (**Australian Consumer**), you may have certain rights and remedies (including, without limitation, consumer guarantee rights) under Australian Consumer Law that cannot be excluded, restricted or modified by agreement. Nothing in these Terms operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other applicable laws of the Commonwealth, State or Territory, where to do so would contravene those laws, or cause any part of these Terms to be void.
- 3.4 For the purposes of sections 3 above “Disclaimers, Limitations of Liabilities”, To the extent that you acquire the products whereas a you are a “consumer” for the purposes of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 (**New Zealand Consumer**), nothing in these Terms operates to exclude, restrict or modify the application of any implied condition or warranty,

provision, the exercise of any right or remedy, or the imposition of any liability under the Fair Trading Act 1986 or the Consumer Guarantees Act 1993.

#### 4. ARBITRATION AND CLASS ACTION WAIVER

4.1 Informal Process First. You agree that, in the event of any dispute between you and the Company Entities, you will first contact the Company in writing and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation, any arbitration or court action.

4.2 Arbitration Agreement and Class Action Waiver.

- (a) Subject to clause 4.2(e), if the dispute remains unresolved thirty (30) days after you first contact the Company in writing under Section 4.1, any remaining dispute, controversy, or claim (collectively, “**Claim**”) relating in any way to your purchase or use of the Products, will be resolved by arbitration, including threshold questions of arbitrability of the Claim. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered in accordance with clause 4.2(c) for Australian Consumers and clause 4.2(d) for New Zealand Consumers.
- (b) **Arbitration will be handled by a sole, neutral arbitrator in accordance with** clause 4.2(c) for Australian Consumers and clause 4.2(d) for New Zealand Consumers. **Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class, consolidated or representative arbitrations and class, consolidated or representative actions are not permitted. You understand that by agreeing to these Terms, you and the Company are each waiving the right to participate in a class, consolidated or representative action or class, consolidated or representative arbitration. Court review of an arbitration award is limited. The arbitrator, however, can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief, or statutory damages).** Notwithstanding the foregoing, you and the Company will have the right to bring an action in a court of proper jurisdiction for injunctive or other equitable or conservatory relief, pending a final decision by the arbitrator. You may instead assert your claim in “small claims” court, but only if your claim qualifies, your claim remains in such court and your claim remains on an individual, non-representative and non-class basis.
- (c) For Australian Consumers, the seat of arbitration will be the State of Victoria, and the arbitration shall be conducted in accordance with the Australian Centre for International Commercial Arbitration Rules (**ACICA Rules**) then in effect.
- (d) For New Zealand Consumers, the place of arbitration will be New Zealand, and the arbitration shall be conducted in accordance with the New Zealand Arbitration Act 1996 provided you enter into a separate legal agreement after the dispute has arisen in which you agree to be bound by this clause 4.
- (e) The Company acknowledges that if you are a New Zealand Consumer, you have rights under the Consumer Guarantees Act 1993 and Fair Trading Act 1989 and this clause 4.2 does not seek to limit New Zealand Consumers rights under these laws

- (f) Each of the Parties shall cooperate in good faith in the discovery or exchange of nonprivileged information relevant to the dispute as necessary in accordance with the applicable arbitration rules of your jurisdiction.
  - (g) The arbitrator's award will consist of a written statement stating the disposition of each claim, and the award will also provide a concise written statement of the essential findings and conclusions on which the award is based.
  - (h) You and the Company shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision.
- 4.3 Costs of Arbitration. Payment for any and all reasonable costs relating to the arbitration will be in accordance with the applicable arbitration rules of your jurisdiction.
- 4.4 Opt-Out. You have the right to opt-out and not be bound by the arbitration provisions set forth in these Terms by sending written notice of your decision to opt-out to [info@theoceancleanup.com](mailto:info@theoceancleanup.com) or to the mailing address listed in the "How to Contact Us" section of these Terms. The notice must be sent to the Company within thirty (30) days of your purchase of the Products or agreeing to these Terms, otherwise you shall be bound to arbitrate disputes in accordance with these Terms. If you opt-out of these arbitration provisions, the Company also will not be bound by them.

## 5. ADDITIONAL PROVISIONS

- 5.1 Injunctive Relief. You agree that a breach of these Terms will cause irreparable injury to the Company for which monetary damages would not be an adequate remedy and the Company shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.
- 5.2 Miscellaneous. If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the licenses granted hereunder may be assigned by the Company but may not be assigned by you without the prior express written consent of the Company. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for reference only and shall not be read to have any legal effect.
- 5.3 You and the Company agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or construction of these Terms.
- 5.4 How to Contact Us. You may contact us regarding the Products or these Terms at: The Ocean Cleanup Projects B.V., Batavierenstraat 15, 3014 JH Rotterdam, the Netherlands or by e-mail at [info@theoceancleanup.com](mailto:info@theoceancleanup.com).

## 6. FOR PURCHASES MADE BY CONSUMERS IN AUSTRALIA

- 6.1 Section 6 is applicable to Australian Consumers.

6.2 These Terms are governed by the laws of Victoria. You and the Company irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Victorian courts.

**7. FOR PURCHASES MADE BY CONSUMERS IN NEW ZEALAND**

7.1 Section 7 is applicable to New Zealand Consumers.

7.2 These Terms are governed by the laws of New Zealand. You and the Company irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New Zealand courts.