

THE KUTAI GUY TERMS OF USE AND TERMS OF SALE

1 APPLICATION OF TERMS

- 1.1 These Terms apply to your use of the App and to any order for, or purchase of, Products you make via the App. By accessing and using the App, or ordering or purchasing Products via the App:
- a you agree to these Terms; and
 - b where your access and use is on behalf of, or you order or purchase Products on behalf of, another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 If you do not agree to these Terms, you are not authorised to access and use the App, or to order, purchase (or attempt to order or purchase) Products from us via the App, and you must immediately stop doing so.

2 CHANGES

- 2.1 We may change these Terms at any time by posting a notice within the App. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the App, or ordering or purchasing Products from us via the App, you agree to be bound by the changed Terms.
- 2.2 We may change, suspend, discontinue, or restrict access to, the App without notice or liability.
- 2.3 **These Terms were last updated on [insert date].**

3 DEFINITIONS

In these Terms:

App means the mobile app The Kutai Guy

Apple means Apple Inc. and its subsidiaries

including and similar words do not imply any limit

Loss includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis

personal information means information about an identifiable, living person

Products means our products advertised on the App, or those products for which you have placed an order via the App, as the context requires

Terms means these terms of use and sale titled The Kutai Guy *Terms of Use and Terms of Sale* and includes the terms of the Privacy Policy

Third Party Charges means any fees charged by third parties in relation to your transaction, including any taxes, duties or other liabilities imposed by any governmental agency (including any customs duty), credit card transaction fees and foreign currency conversion fees

Underlying System means any network, system, software, data or material that underlies or is connected to the App

User ID means a unique name and/or password allocated to you to allow you to access certain parts of the App

We, us or our means Reichardt Marine Limited, trading as The Kutai Guy, company number 4484098

You means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting

4 YOUR GENERAL OBLIGATIONS

- 4.1 You must provide true, current and complete information in your dealings with us (including when setting up an account) and must promptly update that information as required so that the information remains true, current and complete.
- 4.2 You must set up an account with us to purchase our Products. When you set up an account with us, you must keep your User ID secure and:
 - a not permit any other person to use your User ID, including not disclosing or providing it to any other person; and
 - b immediately notify us if you become aware of any unauthorised use or disclosure of your User ID, by sending an email to orders@thekutaiguy.co.nz.
- 4.3 You must not act in a way, or use or introduce anything (including any virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the App or any Underlying System, or otherwise attempt to damage or interfere with the App or any Underlying System.
- 4.4 To the maximum extent permitted by law, you indemnify us against all Loss we suffer or incur as a direct or indirect result of your failure to comply with these Terms, including any failure of a person who accesses and uses our App by using your User ID.

5 ORDERS

5.1 When you place an order for any of our Products via the App:

- a you confirm that:
 - i you are aged 18 years or over;
 - ii you are legally entitled to purchase those Products; and
 - iii you are bound by these Terms in relation to that order, subject to our acceptance of that order;
- b you are making an offer to buy the Products, and we are not bound by that order until we have accepted it;
- c our acceptance of your order occurs when we issue you a confirmation email of receipt of your order; and
- d you may not cancel or alter any order that we have accepted, in whole or in part, without our prior written consent.

5.2 We reserve the right to accept or reject your order in whole or in part, or to cancel any order that we have accepted in whole or in part at any time prior to shipment of the Products, for any reason including, without limitation, the unavailability of any Products, an error in the price or the description of Products on the App, an error in your order, or us not receiving payment in full. Where we cancel an order in whole or in part after we have accepted it, we will notify you of the cancellation by email and will refund your payment in accordance with clause 7.3a but will have no other obligations to you in respect of the order (or the cancelled part of the order, as applicable).

6 DELIVERY

6.1 Products will be made available for collection at the locations stated in the App. You may also choose to have some Products (selected products only, as stated in the App) delivered to you.

6.2 Where you are collecting Products:

- a collection is from our vehicle that will be travelling to certain locations on a planned route. We will provide estimated times of arrival for your chosen location, but do not guarantee an exact time of arrival. We will message you to confirm final arrival time and collection window;
- b proof of purchase must be provided to collect the Products. If you provide your proof of purchase to another person to collect the Products on your behalf, that person takes possession of the Products as your agent and you remain fully liable to us under these Terms despite collection by that other person; and

- c risk in the Products passes to you when the Products are collected in accordance with these Terms (whether or not you collect the Products).

6.3 Where we are delivering the Products:

- a we will deliver the Products to the delivery address nominated by you when placing your order or to any other address we agree to in writing;
- b if you request us to deliver the Products to another person, or if a person other than you takes possession of the Products at your requested delivery address, that person takes possession of the Products as your agent and you remain fully liable to us under these Terms despite delivery to that other person; and
- c risk in the Products passes to you when we deliver the Products to your designated delivery address in accordance with these Terms (whether or not you take delivery). If the Products are lost or damaged in transit, please contact us at orders@thekutaiguy.co.nz. We will use this delivery information to make a claim against our courier company. We will offer you the choice of a replacement or a refund, once we have received confirmation from our courier company that delivery was not successful.

6.4 Any time stated for delivery or collection is an estimate only. We are not liable to you or any other person for any failure to meet a stated time for delivery or collection and any such failure does not give rise to a right to a refund.

7 PRICES AND PAYMENT

7.1 On placing an order for Products via the App, you must pay:

- a the price, shipping and handling charges for those Products stated on the App;
- b GST on any taxable supplies; and
- c any applicable Third Party Charges.

7.2 We accept payment for Products ordered via the App by credit card only.

7.3 We will refund to you an amount that you have paid to us, other than any Third Party Charges, only:

- a where we have received payment from you in relation to an order (or part of an order) that we do not accept or that we cancel;
- b as set out in clause 8; or
- c as required by law.

We will remit any amounts payable by us to you by crediting the credit card or account from which your payment was made.

7.4 We may recover from you all Loss incurred by us as a result of your failure:

- a to take delivery when the Products are made available to you, including any storage costs; or
- b to pay any amount payable by you under these Terms, including any costs of debt recovery.

8 REFUNDS

- 8.1 Where you reasonably believe that you have purchased any Products that are damaged, spoiled or defective, or you have received an incorrect item, you must contact us immediately (within 24 hours of receiving your order) by emailing us at orders@thekutaiguy.co.nz. We may require you to provide photographic evidence of the damage, spoiling or defect or incorrect item.
- 8.2 If we agree Products that have been delivered to you are damaged, spoiled, defective or incorrect, we will, at our cost, replace the Products, or refund the price you paid for those Products by crediting your credit card, in accordance with our rights and responsibilities at law.

9 APPS

- 9.1 You must not:
 - a make or distribute copies of the App;
 - b decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the App from object code except to the extent expressly permitted by applicable law or treaty despite this limitation;
 - c sell, rent, lease, license, sublicense, resell, display, time share, grant a security interest over, outsource or otherwise transfer the App, or permit the use of the App by any third party; or
 - d modify, adapt or translate the App, or merge all or any part of the App with any other software or source code without our prior written consent.
- 9.2 If you download, install, access or use an iOS version of an App:
 - a the App is licensed to you on the terms set out in Apple's standard licensed application end user licence agreement (available at <https://www.apple.com/legal/internet-services/itunes/dev/stdeula/>);
 - b despite anything else in these Terms, your licence to use the App is limited as set out in the usage rules in the Apple Media Services Terms and Conditions (available at <http://www.apple.com/legal/internet-services/itunes/us/terms.html>);
 - c we both acknowledge and agree that:
 - i the licence for the App is concluded between us and you only, and not with Apple;

- ii to the maximum extent permitted by law, Apple has no responsibility or liability in respect of any matter relating to the App or the content made available to you through using the App, including:
 - ▲ your use or possession of the App or the content made available to you through using the App; and
 - ▲ the provision of any maintenance or support services for the App;
- iii we, not Apple, are solely responsible for any express or implied product warranties.
- iv we, not Apple, are solely responsible for the App and the content of the App, and for addressing any claims by you or any third party relating to the App or your possession and/or use of the App, including, but not limited to
 - ▲ product liability claims;
 - ▲ any claim that the App fails to conform to any applicable legal or regulatory requirement;
 - ▲ claims arising under consumer protection or similar legislation; and
 - ▲ investigation, defense, settlement and discharge of any third party claim that the App or your possession and use of the App infringes that third party's Intellectual Property Rights;
- d we, not Apple, are solely responsible for any express or implied warranties. Without limiting clause 9.2c, in the event of any failure of the App to conform to an applicable warranty, you may notify Apple, and Apple may refund the purchase price (if any) for the iOS version of the App;
- e you must comply with applicable third party terms when using the App (e.g. your wireless data service agreement);
- f you acknowledge and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and you are not listed on any U.S. Government list of prohibited or restricted parties; and
- g we and you agree that Apple, and any Apple subsidiary, are third party beneficiaries of this clause 9.2 and that Apple has the right to enforce this clause 9.2 against you as a third party beneficiary.

9.3 Questions, complaints or claims with respect to the App should be directed to:

The Kutai Guy

Post: 71C Hukatere Road, Pukenui 0484

Phone: +64 21 187 539
Email: ZReichardt@hotmail.com

10 INTELLECTUAL PROPERTY

- 10.1 We (and our licensors) own all proprietary and intellectual property rights in the App (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos and look and feel) and the Underlying Systems.
- 10.2 You must not copy, reproduce, adapt, translate, reverse-engineer or make derivative works from the whole or any part of the App or the Underlying Systems.

11 DISCLAIMERS

- 11.1 To the extent permitted by law, we and our licensors have no liability or responsibility to you or any other person for any Loss in connection with:
- a any Products being unavailable;
 - b the App being unavailable (in whole or in part) or performing slowly;
 - c any error in, or omission from, any information made available through the App;
 - d any exposure to viruses or other forms of interference which may damage your computer and mobile phone systems or expose you to fraud when you access or use the App. To avoid doubt, you are responsible for ensuring the process by which you access and use the App protects you from this; and
 - e any site linked from the App or any feature made available by third parties (including features provided by our payment service providers) in relation to the App. Any link on the App to other sites, and any associated third party feature does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or features or their contents, operations, products or operators. You must ensure you comply with any applicable third party terms governing the use of any such sites or features.
- 11.2 We currently supply Products within New Zealand only. We make no representation or warranty that the App is appropriate or available for use in all countries or that the content satisfies the laws of all countries. You are responsible for ensuring that your access to and use of the App is not illegal or prohibited, and for your own compliance with applicable local laws.
- 11.3 We do not warrant or represent that any particular Products are suitable for any particular purpose, including without limit, that any food is suitable for consumption by persons with allergies. **You acknowledge that you are solely responsible for ensuring that any food you eat does not have any content to which you may be allergic.**
- 11.4 You are responsible for exercising reasonable care, skill and diligence in handling, storage and use of the Products.

11.5 To the maximum extent permitted by law, all conditions, guarantees and warranties whether expressed or implied by statute or otherwise in connection with these Terms, or in connection with the App, your access and use of (or inability to access or use) the App, or in connection with any Products, are expressly excluded.

12 LIABILITY

12.1 Our maximum aggregate liability in connection with any Products, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed an amount equal to the price paid by you for the relevant Products.

12.2 Except as set out in clause 12.1, to the maximum extent permitted by law:

- a you access and use the App at your own risk;
- b we are not liable or responsible to you or any other person for any Loss in connection with these Terms, the App, or your access and use of (or inability to access or use) the App. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise; and
- c to the extent clauses 12.2a and 12.2b do not apply or do not limit or exclude any liability our total liability to you for all other claims under or in connection with these Terms, or in connection with the App, or your access and use of (or inability to access or use) the App, must not exceed NZD100.

12.3 We are not liable to you for any:

- a loss of profit, revenue, savings, business and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

12.4 Except to the extent permitted by law, nothing in these Terms has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited our liability is limited as set out in clauses 12.1 and 12.2.

13 PRIVACY POLICY

When you provide personal information to us, we will comply with the Privacy Act 2020 and our Privacy Policy. Our Privacy Policy is available at *[insert]*.

14 SUSPENSION AND TERMINATION

14.1 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the App (or any part of it).

14.2 If you have set up an account with us, you may terminate your account with us at any time by sending an email to us at orders@thekutaiguy.co.nz.

14.3 On suspension or termination, you must immediately cease using the App and must not attempt to gain further access.

15 GENERAL

15.1 We will not be liable to you for any failure to perform our obligations under the Terms to the extent caused by an event that is beyond our reasonable control.

15.2 If we need to contact you, we may do so by email or by posting a notice on the App. You agree that this satisfies all legal requirements in relation to written communications.

15.3 These Terms, and any dispute relating to these Terms or the Products or App, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Products or App.

15.4 A reference to you or us includes a reference to that party's executors, administrators, successors and permitted assigns.

15.5 For us to waive a right under these Terms, the waiver must be in writing.

15.6 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 4.4, 8, 9, 10, 11, 12 and 15.1, continue in force.

15.7 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

15.8 These Terms set out everything agreed by the parties relating to your use of the App and the supply of the Products and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Products or the App that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.