

KiwiOwn
Home shopping made easy



LAYBY SALE AGREEMENT

Terms of Sale

02/2024 KW014v03



Terms of Sale

This document, called “Terms of Sale” forms part of your layby sale agreement with us along with the layby sale order that sets out the product(s) you are purchasing, the amount and the number of payments you are required to make. Please keep these documents in a safe place for future reference.

Please read these terms thoroughly and seek independent advice if you do not understand anything in this document.

You have rights to cancel under the Fair Trading Act 1986, which are set out on this first page of the layby sale order and under the heading “Cancellation” below. You also have a right to reject goods in certain circumstances pursuant to the Consumer Guarantees Act 1993.

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Meaning of Key Words

ADVANCE PAYMENTS	means the number of payments at the value of the payment specified on the layby sale order next to the heading "Advanced payments prior to delivery" and if you fail to make an advance payment on time, the number of advance payments extends as set out in the clause headed, 'Advance payments and delivery'.
BALANCE OF YOUR ACCOUNT	means unpaid balance of your account from time to time and includes all the dishonour fees and other charges due in accordance with your layby sale agreement.
CANCELLATION COSTS	are our reasonable costs in the administration of your layby sale agreement and are calculated as any dishonour fees incurred on the account and any delivery costs we have incurred in respect of your layby sale agreement.
CANCELLATION PERIOD	means, in respect of an order, the period of thirty days from the date of your order.
COOLING OFF PERIOD	means five (5) working days from the date you receive a copy of the layby sale agreement by email to the email address you have given us or by post when email is not available.
DATE OF YOUR ORDER	means the date completed at the top of the layby sale order or, if no date is completed, it means the date that we accept your order.
DISHONOUR FEE	means a fee of \$15 that we charge each time you miss making a payment to us when it is due, except if we have agreed to put the payment on hold.
LAYBY SALE AGREEMENT	means the layby sale order and the terms of sale between you and us and includes any changes to the layby sale agreement.
LAYBY SALE ORDER	means the form headed "Layby Sale Order" which sets out your details, the details of the goods you are purchasing, and the payment details or any replacement layby sale order prepared under the clause headed, 'changing your order'.
ONLINE STORE	means our website at www.kiwiown.co.nz as updated from time to time, which displays some or all of the products available for sale from us and includes our catalogue that we post or email to customers from time to time and, as the context requires, it means the latest version of that catalogue.
ORDER	means placing an order of products from our online store in accordance with the procedure set out under the heading "Placing an Order with us" in these terms of sale.
TERMS OF SALE	means this document headed "Terms of Sale".

Placing an Order With Us

You can place an order by:

- completing and signing the layby sale order;
- signing an ‘Authority to your Bank to Accept Direct Debits’ form; and
- make payments by direct debit or credit/debit card unless you are paying the outstanding balance in full
- providing any other information we request to assist our identity verification and credit assessment.

If we accept your order we will advise you by telephone, email or in writing. Our acceptance is conditional upon receipt of the layby sale order and where paying by Direct Debit an ‘Authority to your Bank to Accept Direct Debits’ form being completed to our satisfaction.

If we are unable to supply the goods ordered, all money already paid by you to us in relation to the order will be refunded and we will not be liable to you or any person if we decline or are unable to fill the order for any other amount.

We may revise and/or discontinue products that we have advertised in our online store at any time without notice. By placing the order with us, you should be aware that certain products may not be available or may be limited in numbers.

The purchase price for the product is the price confirmed by us at the time we accept your order.

Payments

You may repay the balance of all the payments owing under your layby sale agreement at any time.

You are required to make the payments for each payment period as set out under the heading ‘Payment information’ on the layby sale order and you are required to pay the balance of your account at the end of the term.

If a direct debit payment dishonours:

- We may reschedule a dishonoured direct debit payment so that it debits your designated account on another date.
- A dishonour fee of \$15 is payable and will be charged to your account.

We will deduct the payment for each payment period on the day specified in the Payment information’ section of the layby sale order or if no day is specified then on a day we choose or otherwise by agreement.

Any payment you make pursuant to your layby sale agreement will be allocated to the order as follows:

- to any amount we incur in doing anything that you are required to do under your layby sale agreement;
- to any cost or expense that we incur in the exercise of our rights under your layby sale agreement including costs we incur in the enforcement of our rights under your layby sale agreement;
- to any default fee or charge debited to your layby sale agreement; then
- equally to the goods purchased by you in an order.

Putting Your Payments on Hold

At any time before we have dispatched the goods, you can put your put your payments on hold for up to a total of 2 weeks, either consecutively (two continuous weeks) or a single week at different times.

To put your payments on hold you need to contact us before that payment is due and request a payment hold. If you do that, we will pause the direct debit for that week and you will not be charged a dishonour fee for that payment.

Vary the Payments & Extend the Term

If you fail to make a payment on time, we may, but are not obliged to, vary any payment amount or extend the time for payment. This could include extending the final payment date or changing the amount of the regular payments. Any change we make is entirely at our discretion.

Advance Payments and Delivery

Before we arrange delivery of the goods you must:

- make the advance payments on time; or
- pay the balance of your account in full.

If you fail to make an advance payment on time, the number of advance payments will increase so that after the default in payment, you are required to make at least 4 consecutive advance payments on time.

Once you have made all the advance payments as required or paid the balance of your account, we will arrange delivery

of the goods to you within fifteen (15) working days.

If you have made the advance payments but fail to make an ordinary payment before we deliver the goods to you (for example during our 15 working day delivery period), we may defer delivery of the goods until you have made at least 4 consecutive payments on time. If we decide to defer delivery because of a missed payment, we will contact you by phone, text or email to let you know that we have deferred delivery and the reason why.

We will deliver the goods to your residential address specified in the layby sale order. We will deliver via a courier service.

Where there is no-one at home to accept delivery, we may at our discretion either retain the goods at our offices for your collection or leave the goods at your residential address.

We will not dispatch any goods for delivery until the expiry of the cooling off period.

To the extent permitted by law, any time frame for delivery is an estimate only and we will use our best endeavours to deliver the goods on time. For the avoidance of doubt, the time for delivery is not of the essence for your layby sale agreement. However, if our failure to deliver is of substantial character, as defined in the Consumer Guarantees Act 1993, then you will have the rights set out in that Act.

Changing the Place for a Delivery

If you request that we send the goods to a different address than your residential address, as notified to us from time to time, you will be responsible for any additional cost we incur in sending the goods to you at that new address.



Your Right to Cancel

You are entitled to cancel the order at any time before:

- the expiry of the cooling off period;*
- you take delivery of the goods; and
- the expiry of the cancellation period,

whichever is the later date.

If you cancel the order at any time before the expiry of the cancellation period, you can cancel by:

- returning the goods to our office in the exact condition as when they were delivered to you; and
- requesting a full refund of the amounts paid to your account in respect of that order.

If you cancel the order after the expiry of the cancellation period for that order but before the goods have been delivered, then you are entitled to a refund of all the payments you've made to the account for that order after we deduct the cancellation costs due or debited as at the date of cancellation.

If the amount due to be refunded to you is less than the total of the cancellation costs the agreement will be cancelled but we will be entitled to recover the balance of the cancellation costs owing from you as a debt immediately due and owing.

*Please note that no goods will ever be delivered before the expiry of the cooling off period. Nothing in this clause modifies your rights to cancel under ss 36M or 36F of the Fair Trading Act 1986 (FTA). If your layby sale agreement is an uninvited direct sale and we have failed to comply with the disclosure requirements set out in section 36L of the FTA (except to the extent that the failure to comply is minor and does not materially prejudice you (see section 36N(2) of the FTA), you retain the right to cancel your layby sale agreement at any time.

Statements

We will give you a statement on request in an electronic form. These statements will give you information about your account (e.g. the total price of the order, the payments you have made, the balance of your account, any dishonour fees charged during the statement period, a description of the cancellation costs that you would have to pay if you were to cancel the agreement and when and how the payment are required to be made.

The Goods

The goods remain at our risk until the goods are delivered to your address.

You must ensure when you receive the goods that those goods are the goods that you expected to receive, and you must inform us immediately if any of the goods do not match the goods advertised to you. However, if the exact model of a good is not able to be provided by our suppliers, we will offer you a replacement good with comparable or better features.

To the extent permitted by law and unless otherwise expressly agreed in writing, it is not a condition of your layby sale agreement that the goods will correspond precisely with the dimensions and specifications set out in the layby sale order and customary tolerances or, in the absence of customary tolerances, reasonable tolerances will be allowed.

Consumer Guarantees Act 1993

The goods will be fit for the ordinary purposes to which that type of good is ordinarily put.

If you have a specific purpose, which is in

addition to the ordinary purposes, then you must satisfy yourself that the goods are fit and suitable for that purpose. To the extent permitted by law, we make no representation, give no warranties and expressly negate any implied or expressed condition that the goods will be suitable for that particular purpose or use.

To the extent permitted by law, you agree to accept all risk and responsibility for consequences arising from the possession or use of any goods purchased from us. Except to the extent of our responsibilities in the Consumer Guarantees Act 1993 and the remedies available to you in that Act and generally at law, we have no liability for any claim, loss, damage or expense of any kind whether direct, consequential or otherwise and caused directly or indirectly and by the goods or part of them.

If the goods are of unacceptable quality within the meaning of the Consumer Guarantees Act 1993, then you must notify us within a reasonable time following the delivery of the goods. If the goods are of an unacceptable quality we may, at our option:

- repair the goods; or
- replace the goods with goods of identical type; or
- where we cannot reasonably be expected to repair or replace the goods, provide a refund of any money paid by you in respect of the goods.

Where the goods have a failure of substantial character (as defined in section 21 of the Consumer Guarantees Act 1993) then you will have the rights set out in section 18.3 of that Act.

In some circumstances you may have the right to reject the goods when they are delivered. If you have this right and you elect to use it the goods must not have been disposed of, lost, destroyed or damaged after delivery to you or attached or incorporated into real or personal property. The goods must be returned or made available for us to take possession with all original packaging and be in a good order.

Consumer Protection Legislation

To the extent that the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 apply to your layby sale agreement, you will have the rights set out under those Acts. In case any one or more of the clauses contained in these Terms of Sale is, for any reason, invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of your layby sale agreement, but your layby sale agreement shall be construed, so far as is reasonable and possible, as if such invalid, illegal, or unenforceable provision or provisions had never been contained in your layby sale agreement or in a manner that is reasonable and reflects the intent of the parties to your layby sale agreement.

Your Promises to Us

You warrant and represent that:

- the information provided to us is true and correct as at the date of your order.
- you are not currently bankrupt, you are 18 years of age or older, and you have full capacity to enter into your layby sale agreement.

Default

If you fail to do anything you are required to do under your layby sale agreement or breach a term of your layby sale agreement, then you will be in default.

If you are in default, we may demand that you pay the balance of your account along with all dishonour fees and any costs we incur in the enforcement of our rights under your layby sale agreement, including but not limited to third party charges, solicitor-client costs on a full indemnity basis and any tribunal or court fees.

Change of Address

You must notify us of any change to your address.

If you move and do not advise us of a change of address then you will be deemed to have received any statement or other notices we send to you at the address you last advised us as if you had not changed address.

Changing Your Order

At any time before we have dispatched the goods for delivery, you can contact us over the phone or via our online store and ask to make a change to your order.

When you request a change to your order and we agree to that change, we will arrange that the change to your layby sale agreement by placing new order of goods, which is documented on a new layby sale order document and by cancelling your current order. You will need to accept the changes to your layby sale agreement by communicating your acceptance of the new layby sale order. When you have accepted the new order, the balance of your account will be applied to the purchase of the goods set out in the new layby sale order. If applicable, we will change your payment (which will be deducted by direct debit) to meet the new payment amount as set out in the new layby sale order.

Agreed Changes and Other Changes we can Make

Any agreed changes to your layby sale agreement will be made in writing, which includes digital or electronic form of text.

We have the power to change these Terms of Sale for one or more of the following reasons (without seeking your consent):

- to comply with any change or anticipated change in any relevant law, code of practice or guidance document;
- to reflect any decision of a court, ombudsman or regulator;
- to reflect a change in our systems or procedures, including for information security or other security reasons;
- as a result of changed circumstances (including by adding benefits or new features); and
- to make them clearer.

When deciding whether to change the Terms of Sale, we'll act fairly and reasonably and comply with our legal obligations.

Notice and Communications

You may send notices to KiwiOwn by:

- writing to KiwiOwn at our postal address; or
- sending an email to info@kiwiown.co.nz,

unless we have notified you that we have changed our address and in that case, we will accept service at our new address.

You agree to accept notice by way of personal delivery, letter or email at the addresses supplied by you in the layby sale order. You can contact us and update your email address to a new valid email address at any time. Any notice sent by email shall be effective immediately upon delivery to the server providing your email service.

Any notice sent by personal service shall

be effective immediately by delivery to the address specified in the layby sale order.

Any notice sent by letter shall be deemed to be delivered by posting to the address specified in the layby sale order.

Privacy

We collect your personal information so that we are able to assess and verify information about you in relation to the order and if necessary, enforce our rights in your layby sale agreement.

In order for us to assess your ability to pay for the order and to verify your information, you authorise us to:

- Obtain a credit report from a credit reporting service.
- Give our credit reference agency your positive credit information (including repayment history information) and about any default in your payment obligations.
- Make enquiries about fines with Ministry of Justice or using tools provided by the Ministry of Justice.
- Query the New Zealand Transport Agency database about the status of your driver licence.

You also agree that we may use your information to offer new products and services to you and that we may share your information to other related companies in our group.

All information we collect in relation to your layby sale agreement will be held by us and may also be shared and/or held by credit reporting agencies, our agents, or our professional advisers to the extent they are required to review, use or store the information in the delivery of their services to us.

We may also share your information with our assignees (or potential assignees) and

their professional advisors to the extent they are interested taking a transfer or assignment of your layby sale agreement.

You understand that we may require you to provide information to a credit decision support service, such as Credit Sense, and you authorise that credit decision support service to share your information and their analysis of your information, with us.

You authorise us to disclose personal information about you to your employer, credit reporting and debt collection agencies in the event of any default in any sum owing to us, and also to any third party making an authorised enquiry about you.

You can contact us by phone, email or post to confirm how you can inspect the information we hold about you, and if you believe any of the information is incorrect, you may request us to correct it.

Where the personal information may readily be retrieved, you can have the access to it together with the right to request correction that information, subject only to the payment of reasonable fees if requested by us.

General

Your layby sale agreement represents the entire agreement of the parties.

Should any part of your layby sale agreement be found to be void, invalid, unlawful or in any way unenforceable then it shall be severed from your layby sale agreement and the remainder shall continue in full effect.

We may assign or give a security interest over our rights in your layby sale agreement. You are not permitted to assign your layby sale agreement.

No failure to exercise, and no delay in exercising, any of our rights under your layby sale agreement operates as a waiver of that right. No waiver by us of our rights under your layby sale agreement is

effective unless it is in writing signed by us.

Where any term of these Terms of Sale conflict with the layby sale order these Terms of Sale shall prevail.

The law of New Zealand shall apply to your layby sale agreement.

Complaints

If you are not satisfied with the service you receive from us please contact us. We have an internal complaints process and undertake to investigate your concerns promptly and fairly. You may contact us to make a complaint by telephone 09 869 38 38, by email, or in writing to complaints@kiwiown.co.nz.

We are a member of an independent dispute resolution scheme operated by Financial Dispute Resolution Service ("FDRS"). If you are not satisfied with our response, you may refer the matter to FDRS by emailing enquiries@fdrs.org.nz or calling FDRS on 0508 337 337.

- Full details of how to access the FDRS scheme can be obtained on their website <https://fdrs.org.nz>
- There is no cost to you to use the services of FDRS. Greenfield Global Limited's member number is FM5669.
- REGISTRATION ON FINANCIAL SERVICE PROVIDER REGISTER
- Greenfield Global Limited trading as KiwiOwn is registered on the Financial Provider Register.
- Our registration number is FSP373966.



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EMAIL

info@kiwiown.co.nz

SHOP

www.kiwiown.co.nz

ADDRESS

6 Findlay Street, Ellerslie,
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BUSINESS HOURS

Monday - Friday
10am - 4pm

Any questions? Give us a call.

09 869 38 38

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