

# Participation Agreement



MARKETPLACE

## 1. Formation

- 1.1. By using the Catch.com.au website and associated merchant Services set out herein ("Website" or "Platform") you agree to be bound by these terms and conditions and associated rules, guidelines and policies ("Participation Agreement") and our Privacy Policy. This Participation Agreement is between you and Catch.com.au Pty Ltd ACN 149 779 939 (referred to in this Participation Agreement as "we", "us" or "our").
- 1.2. We reserve the right to make changes to the Participation Agreement (and associated rules, guidelines and policies) at any time at our discretion. Such changes will be notified to you via our Website and will apply 7 days after such notification. You must ensure you remain up-to-date with our latest Participation Agreement. Continued use of the Website and associated Services after the notification period set out above will constitute your acceptance of any changes.

## 2. What is the Catch Marketplace?

- 2.1. Our Platform allows you as a third-party merchant user to list and sell your goods directly to customers, and we provide services to facilitate these transactions.
- 2.2. By selling on our Platform, you are contracting directly with the customer, and sales on our website are subject to our standard terms and conditions of sale.

## 3. Registration Requirements

- 3.1. You must be a registered seller to access and use the Services features of the Website. We reserve the right to accept or reject your registration for any reason (or no reason) at our absolute discretion. We will typically reject your registration if we believe:
  - (a) your products are unsafe or may infringe any law;
  - (b) your products, policies and procedures are not in-line with our Catch Values Statement and our other rules, guidelines and policies;
  - (c) we deem that you are otherwise unable to meet our Seller requirements or the obligations under this Participation Agreement.
- 3.2. On registration, you warrant that:
  - (a) you are a duly constituted company under Australian law (or the law of your country of residency);
  - (b) if you are required to be registered for GST, you hold of a valid ABN;
  - (c) you, or persons registering as a seller on your behalf, hold all requisite power and authority to enter into this Participation Agreement and be bound by its terms and the performance of your obligations hereunder.

- 3.3. You must provide us with and ensure that we always have accurate, up-to-date details including but not limited to contact address, email address, payment information.

#### **4. Fees, Services, and relationship between the parties**

- 4.1. We will provide you the Services set out in this Agreement in exchange for our Seller Fees. The Seller Fees will be agreed between you and Catch when you open a Seller Account, and the rate will be shown in your account page. We may amend or change our fees at any time. Any changes in the Fees will be notified to you in writing.
- 4.2. The Services provided are a sales and listing platform for you, the Seller, to list and sell goods and/or services to third party customers. We are not responsible for, nor party to the transactions that take place between you and any buyer of your goods except as set out in this Participation Agreement.
- 4.3. You are responsible for the content of all product listings you place on the Website. You warrant and agree that all information you provide shall be accurate and up-to-date, comply with all laws and will not breach any third-party Intellectual Property Rights.

#### **5. Selling goods on the Website**

- 5.1. You must provide accurate details and descriptions in relation to the goods or services you offer on the Website. This includes but is not limited to (where appropriate):
  - (a) technical specifications, sizes, colours and dimensions;
  - (b) any required safety notices, labelling or warnings;
  - (c) where necessary, any registration numbers or details (for example, ARTG or AUST L numbers for goods on the Australian Register for Therapeutic Goods);
  - (d) shipping information (including the cost, estimated delivery timeframes and method of shipping); and
  - (e) your returns and refund policies (and other general terms of supply) that apply in relation to your goods;
  - (f) any other information or attributes about your goods or services that we may reasonably request from time to time.
- 5.2. Goods can only be listed in the single, most relevant product category. You must not list the same item(s) in multiple product categories or list the same item(s) in multiple listings.
- 5.3. All goods sold by you must be safe and comply with all applicable Australian laws, product safety requirements and mandatory standards.
- 5.4. We reserve the right to review your goods or listings either prior to or after they are listed on the site to check for compliance with this Participation Agreement including our applicable policies. We may,

acting reasonably refuse to list goods or remove goods from the Website where those goods do not comply with our published policies. In addition, we reserve the right to suspend or terminate your account for breach of this Participation Agreement including any applicable policies.

- 5.5. In relation to your goods sold on our Website, you warrant and agree that:
  - (a) your goods are safe and comply with all applicable laws, product safety requirements and mandatory standards;
  - (b) your goods (and sale thereof) do not breach any third party's Intellectual Property Rights;
  - (c) you have the right to sell and dispose of the goods, and that the listing is accurate, up-to-date and not misleading or deceptive in any way.
- 5.6. When a buyer places a valid order on the Website for your goods and services, you acknowledge and agree that:
  - (a) a contract of sale exists between you and the buyer of the goods for the supply of the goods which the subject of the order; and
  - (b) you will be committed to fulfil the order at the time the payment for the goods is received by us.
- 5.7. You will determine the sales price of your goods. The sales price (and associated shipping charges) displayed on the Website ("Sales Price") shall represent the total price payable for the goods or services including any necessary taxes or charges. You agree not to charge any additional undisclosed amounts to buyers.
- 5.8. You must only use the Website and Services to transact with customers via the Website, and you must not:
  - (a) upload any web links, URLs, or redirects to any third-party websites or online shopping platforms (including your own website);
  - (b) include in any parcel (without our express written permission) any promotional or marketing material for any third-party websites or online shopping platforms (including your own website);
  - (c) ship goods in any parcel that bears logos or marks for a third-party website without our express written permission (for example, Amazon fulfilment services parcels);
  - (d) use in any other way the Services or functionality provided with them to circumvent any customer transactions or promote any third-party websites or online shopping platforms (including your own website).
- 5.9. You agree to comply with our published policies in relation to the sale of goods on the Website, which we may amend at any time.
- 5.10. Any terms you provide to customers will be subject always to this Participation Agreement and the general terms and conditions of the Website.

## **6. Minimum Service Obligations**

- 6.1. As a Seller on Catch.com.au, you must maintain consistent high standards to meet the expectations of our customers and you are required to conform with our minimum service obligations set out in this clause and elsewhere in our Participation Agreement. A failure to comply with these obligations may result in the suspension or termination of your account or selling privileges as determined by us.
- 6.2. We reserve the right to enforce our rights under this clause to the extent we reasonably believe necessary to protect our customers and to protect ourselves from potential liabilities that may arise from your conduct. This means we may sometimes be more lenient in the enforcement of our rights, but such leniency shall not constitute a waiver of our rights.
- 6.3. In addition to anything else in this Participation Agreement and our associated policies, you must at a minimum:
  - (a) Confirm and dispatch orders within 2 Business Days of receiving an order confirmation from us;
  - (b) maintain an order acceptance rate over 95%;
  - (c) maintain both an Incident Rate and Dispute Rate of below 3%;
  - (d) have no more than 3 sequentially cancelled 'confirmed' orders or rejected orders at any given time.
- 6.4. You must otherwise:
  - (a) ship goods within the stated delivery/shipment times on your item listing and ensure your listing clearly detail your expected delivery/shipment dates;
  - (b) maintain and manage your inventory appropriately to ensure you can fulfil customer orders within a reasonable time frame; and
  - (c) respond to and handle customer complaints and issues promptly and without unnecessary delay and in accordance with clause 7.

## **7. Handling customer complaints**

- 7.1. Your returns and refunds policies and procedures must always comply with our customer service policies and applicable laws, including the Australian Consumer Law. You must make these policies available to customers via the listing for your goods.
- 7.2. Where a customer raises a query or complaint with you, must resolve the incident with the customer in accordance with the law and our stated policies. Depending on the nature of the complaint, any pending payment for the goods which are the subject of the Incident may be put on hold until the incident is resolved.
- 7.3. If a customer lodges a complaint directly with us, we may refer the complain to our Dispute Resolution Process set out in clause 8.

- 7.4. You must communicate directly with buyers through the functionality enabled on the Website you are responsible for acceptance and processing of returns, and arrangement or replacement or repairs or payment of refunds where applicable. We do not bear risk or responsibility for any arrangements made between you and buyers in relation to the return of goods or your handling of complaints.

## **8. Customer dispute resolution**

- 8.1. If a customer feels their complaint has not been resolved by you, they may raise a dispute with us as part of Catch Marketplace Dispute Resolution Process.
- 8.2. You agree and authorise us to handle the customer's complaint at our reasonable discretion, but in accordance with our published policies from time to time. This authorisation extends to issuing the customer with a refund for the goods. All refunds provided under this clause are Authorised Deductions in accordance with clause 9.1(b).

## **9. Payments, payment processing and refunds**

- 9.1. You authorise us to process transactions on your behalf between you and buyers of your goods and services, whereby we shall:
- (a) receive Sales Proceeds on your behalf for your goods and/or services sold on the Website;
  - (b) deduct any applicable Seller Fees and any other charges, refunds (including refunds provided by us in accordance with clauses 7 and 8 or any other policies or procedures we have in place from time to time) or other authorised deductions or adjustments made in accordance with this Participation Agreement ("Authorised Deductions") from such proceeds;
  - (c) if insufficient proceeds are available for such deductions under subparagraph (b):
    - i. offset any amounts owing to us from any existing future Sales Proceeds or, where applicable, Seller Indemnity Fund; or
    - ii. you must pay to us any such amounts immediately and demand.
  - (d) remit Sales Proceeds (less any deductions made under subparagraph (b)) to your nominated bank account in accordance with this Participation Agreement.
- 9.2. All transactions connected with this Participation Agreement shall be in Australian dollars.
- 9.3. When a buyer places a valid order on the Website for your goods and services, you will be committed to fulfil the order at the time the payment for the goods is received by us. Our total liability to you in respect of an order shall be the amounts actually received by us less any Authorised

- Deductions made in accordance with this Participation Agreement and the Pricing Schedule.
- 9.4. You may authorise refunds or adjustments to a buyer's order or account via the functionality enabled by the Website. We do not take responsibility for erroneous adjustments, refunds, credits, or other payments made by you to the buyer (unless arising from our own act or omission).
- 9.5. Payments will be made:
- (a) For Sellers located in Australia, a nominated Bank Account on a Business Day (being Monday to Friday between 9am and 5pm in the State of Victoria, Australia, excluding public holidays); or
  - (b) For all other Sellers, via our nominated third-party payment gateway.
- 9.6. The minimum payment amount for Sellers paid under clause 9.5(b) above is \$20 AUD. If at any time there is less than this amount owing to you, payments will be delayed until there is a sufficient amount owing. Where this agreement is terminated, or where you cease selling goods, any amounts held by us owing to you below this amount will be paid within 90 days.
- 9.7. You will be liable for any and all service or transaction fees levied by your bank, or any third-party payment gateway in connection with any payments made by us to you.
- 9.8. Payments will be made weekly into your designated account ("Payment Cycle"). Payments will equal Sales Proceeds collected for the previous Payment Cycle less Authorised Deductions. If a payment date falls on a day other than a Business Day, the payment will be made on the following Business Day. All payments will be made by electronic funds transfer and will generally appear in your account within 5 Business Days from the date of payment.
- 9.9. Sales Proceeds held by us:
- (a) represent an unsecured claim against us;
  - (b) are not insured; and
  - (c) may be combined with those of the other users of our Services.
- You are not entitled to receive any interest on Sales Proceeds held by us in our account.
- 9.10. With each payment, you will be issued a statement which outlines the total Sales Proceeds and Authorised Deductions for the payment period.
- 9.11. We may set off any amounts owed to us against Sales Proceeds held on your behalf. If Authorised Deductions exceed Sales Proceeds, without limiting any other rights we may have at law, we may, at our discretion deduct such funds from the Sales Proceeds of the payment period immediately following the payment period for which there is a negative balance.

- 9.12. Refunds must be processed through your account and the provided functionality of our Platform. We will not be liable for any refunds provided on your account.
- 9.13. Where required, we will make refunds to customers that are authorised by you or that we are otherwise authorised to make in accordance with this Participation Agreement, and you will compensate us in full for any refunds made. If a refund is made through a third-party payment gateway (i.e. Paypal), we may deduct the amount refunded from your account. Without limitation to any right we may have under these terms and conditions, we may make adjustments for refunds as an Authorised Deduction under this Participation Agreement, and this clause survives termination of this Participation Agreement.
- 9.14. We may at our absolute discretion, assess buyers of your goods or services for potential fraudulent transactions. If we reasonably suspect a buyer of fraud, we may not proceed with or cancel the buyer's order and issue a refund to the buyer. Where a buyer's order is cancelled for suspected fraud, we will take reasonable steps to notify you of its cancellation as soon as possible. We will not be responsible for any cancelled orders where we notify you of such cancellation prior to an order being shipped. We will otherwise bear risk of credit card fraud in relation to purchases (limited to circumstances where an unauthorised third party fraudulently uses the credit card of another person). We may, in addition and at our absolute discretion, impose transaction limits on buyers to limit fraudulent activity.

## **10. Security for refund liabilities**

- 10.1. We may, at our reasonable discretion, decide that your account shall be subject to a security amount for liabilities that may arise against us for your goods ("Seller Indemnity Fund") equal to 5% of total monthly sales on our platform, which shall be withheld from amounts owing to you under this Agreement.
- 10.2. Where your account is subject to this clause, you irrevocably authorise us to deduct any amounts owing under this agreement as a liquidated sum, for liabilities arising as a result of:
  - (a) Refunds we provide to customers in accordance with our published policies or procedures, or otherwise as required by law;
  - (b) Any other loss cost or liability that may arise as a result of your conduct.
- 10.3. The Seller Indemnity Fund is not held in trust and is intended to cover liabilities that arise against us for conduct by you as a liquidated sum. Deductions we make from the fund are in addition to and do not



subrogate any other rights or remedies we may have for your breach of these terms.

## **11. Access and use of the Website and Services**

- 11.1. You must only use our Website and platforms through the interfaces provided by us and in accordance with these terms and any applicable law.
- 11.2. You must not (or attempt to):
  - (a) interfere (or attempt to interfere) or disrupt (or attempt to disrupt) our site or the servers or networks that host our site;
  - (b) use (or attempt to use) data mining, robots, screen scraping or similar data gathering and extraction tools on our site;
  - (c) interfere (or attempt to interfere) with security-related or other features of our site; or
  - (d) use, copy or distribute (or attempt to use, copy or distribute) content without our express permission (including without limitation the Customer Database).
- 11.3. We may refer fraudulent or abusive or illegal activity to the relevant authorities and in doing so disclose information to such authorities relating to your account. We may, at our discretion, investigate any suspected illegal activity on your account. You are solely responsible for the activity that occurs on your account and you must keep your account password and details secure. We are not responsible for any unauthorised activity on your account occurring because of your failure to keep your account login information secure.
- 11.4. The Services are provided 'as is' and we do not warrant or guarantee that the Website and related Services will be available at all times or for a specified period of time and without disruption. We provide no warranties in relation to the content of any other website linked to or from our Website.
- 11.5. We reserve the right, at any time and from time to time, to alter or change the Website, Services and associated functionality in any way. In addition, we reserve the right to suspend or terminate your account for any reason or no reason.
- 11.6. This Participation Agreement does not guarantee the ongoing provision of the Services. We may, at any time and at our absolute discretion, restrict or modify your use of the Services, or terminate the provision of Services to you.

## **12. Product Safety and Recalls**

- 12.1. All goods you sell on our Platform must comply with all Australian mandatory safety standards, and any other laws or regulations concerning product safety.

- 12.2. Where you become aware of any actual or potential defect, fault or condition relating to the goods you sell or have sold on our Platform which poses a safety risk to the public (“Risk”), then you must immediately alert us in writing, and notify us:
- (a) of the specific goods affected;
  - (b) the nature of the Risk; and
  - (c) any proposed action to be taken in relation to that Risk.
- 12.3. It is a condition of using our Platform that you must take all reasonable steps to diminish the threat to the public of such Risks, which may include but is not limited to:
- (a) withdrawing the goods from sale;
  - (b) recalling the goods in accordance with applicable laws and regulations; or
  - (c) taking corrective action where necessary.
- 12.4. All recalls or similar corrective actions are subject to our [Product Withdrawals and Recalls](#) policy, as in place from time to time.
- 12.5. Where we become aware of a Risk, either through you or by other means, in relation to your goods and in our reasonable opinion:
- (a) the Risk is such that it could cause loss, damage, injury or death to persons; and
  - (b) you have failed to take, or intend not to take, reasonable actions necessary to diminish such Risk; then

without limitation to any other rights we may have under this Participation Agreement and more generally, we may, at our absolute discretion, suspend or terminate your account and take whatever actions we deem necessary to diminish such Risk, which may include but is not limited to:

- (c) removing the goods from sale from our website;
  - (d) informing customers of the Risk and steps that should be taken to diminish the Risk; and
  - (e) where necessary, provide compensation to customers.
- 12.6. Where goods you have sold on our Platform are subject to a recall or similar corrective action that is subject to our [Product Withdrawals and Recalls](#), you irrevocably authorise us to deduct as a liquidated sum, any administrative fees and other loss or damage associated with the recall in accordance with that policy from any available funds under your Seller account.

## 13. GST and Taxes – General

- 13.1. Subject to clause 14, it is your responsibility to calculate and determine and pay the amount of any necessary taxes associated with your use of our Platform. We bear no responsibility for or liability to you in relation to any taxes paid or payable in relation to the sale of your goods.
- 13.2. Where applicable you warrant you are registered for GST and will remain so for so long as you sell goods on our Platform.
- 13.3. Subject to clause 14, Your Sales Price must include GST where applicable. You cannot add GST to the goods after they have been bought or sold.
- 13.4. Our Fees include GST where applicable, and we are entitled to recover from you and you must pay the amount of any GST payable under the GST Act for any taxable supply made under this Participation Agreement.
- 13.5. You are responsible for providing customers invoices for their goods where required under the GST Act.
- 13.6. You must not issue a tax invoice for the Services. We will issue you with a recipient created tax invoice ("RCTI") in respect of supplies made under this Participation Agreement.
- 13.7. Each party warrants that it is registered for GST (where applicable) and will notify the other if at any time it ceases to be registered.

## **14. GST – International Sellers**

- 14.1. This clause applies to Sellers who are located outside of Australia only.
- 14.2. For the purposes of GST:
  - (a) Catch is an electronic distribution platform (EDP) as defined in Australia's GST Act;
  - (b) Sales of low value import goods (with an order value of less than \$1000) are subject to GST;
  - (c) Catch is responsible for collection of GST on sales of low value import goods on our Platform and remitting this amount to the Australian Taxation Office.
- 14.3. We will add GST to the sale price of your goods sold on our platform where they are priced below \$1000. You should not add the amount of GST to the cost of your goods yourself.
- 14.4. Where goods are over \$1000, you are responsible for the collection of GST. Catch will not add GST to, or collect GST on, these orders.
- 14.5. The GST we collect will not be reported to you.

## **15. Privacy and Personal information**

- 15.1. Our Privacy Policy will govern how we will use or disclose any personal information relating to your account and the transactions that occur under this Participation Agreement. Please review and understand our

Privacy Policy, which we may amend from time to time. You must at all times comply with the *Privacy Act 1988* in relation to your handling of personal information collected or disclosed to you in connection with this Participation Agreement.

- 15.2. You must not, and ensure that your employees, officers, agents, or affiliates do not, directly or indirectly disclose any personal information about any person (including but not limited to a buyer's name, address, email address, contact number or order history) to any third party unless such disclosure is necessary for the performance of your obligations under this Participation Agreement, provided that you ensure that the receiving party only uses that information for the purposes for which it was disclosed, namely the fulfilment of your obligations under this Participation Agreement.
- 15.3. You must not use any customer information for any purpose other than to provide customers the goods and services they purchase from you on our platform. You must not otherwise use customer information to send customers any marketing material, third party offers, or other sales related communications without our express written permission.

## **16. Intellectual Property**

- 16.1. For the duration of this Participation Agreement, you grant us a worldwide, royalty free, irrevocable, non-exclusive right and licence to use, reproduce, publish, communicate to the public, adapt, display, alter, amend, reformat and otherwise use your materials, including without limitation logos, trademarks, product images, descriptions and information ("Materials") provided to us for the purposes of providing our Services on the Website and you also grant us the right to sublicense these rights to our affiliates, service providers and other users of the Services for the purposes of merchandising or advertising goods and services or the Services, provided however that we do not alter (except resize) your trademarks without your express written permission. You warrant that you have all necessary right, title and interest in the Materials to grant us the rights set out in this clause and that our use of the Materials as set out above will not infringe any third party's Intellectual Property Rights.
- 16.2. Our customer database including customer names, email addresses, delivery addresses, contact details and order history ("Customer Database") remains the property of Catch.com.au, and for the purposes of this Participation Agreement, we grant you a limited, revocable, royalty free right and licence to use the Customer Database solely for the fulfilment of your obligations under this Participation Agreement, namely fulfilling orders to customers. You must not without our express written permission in relation to the Customer Database use, copy,

reverse engineer, or compile data from the Customer Database, distribute, sell, commercialise or disclose the Customer Database or any elements thereof, of otherwise use the Customer Database to market your goods, company or services other than as expressly provided for within this Participation Agreement.

- 16.3. You must not use any our other intellectual property, including trade marks (both registered and unregistered), logos, artworks, copyright, designs or any other intellectual property whatsoever without our express written approval in each case.
- 16.4. Neither party shall obtain any right or ownership to a party's pre-existing intellectual property except as expressly set out in this clause.

## **17. Intellectual Property Claims – Claims Process**

- 17.1. Third party rights owners may make a claim in relation to a particular listing or listings through our rights claim process. Where a third party makes a claim:
- (a) We will review the complaint and the listings about which there is a claimed infringement may be suspended;
  - (b) we will notify you that there is a claim in relation to one or more of your listings and provide you with the relevant contact details of the claimant;
  - (c) the relevant listings will remain suspended unless until both parties inform us that the issue is resolved, or we otherwise believe the issue is resolved.
- 17.2. Where there are multiple listings subject to a complaint, or we otherwise believe you to have infringed or potentially infringed a third party's intellectual property rights, we may, at our discretion, suspend or cancel your entire account, and you indemnify us for any loss or damage incurred in relation to any infringements in accordance with clause 19.
- 17.3. We will not be liable for any listing or account suspension or terminations arising as a result of a complaint made in relation to one or more of your listings.

## **18. Disclaimer and Liability**

- 18.1. To the maximum extent possible at law, we exclude all liability to you or anyone else for loss or damage of any kind or nature relating in any way to the Website and Services including, but not limited to, loss or damage you might suffer as a result of:
- (a) errors, mistakes or inaccuracies on the Website or our social media pages;
  - (b) you acting or not acting, on any information contained on or referred to on the Website and/or any linked Website or our social media pages;

- (c) personal injury or property damage of any nature resulting from your access to or use of the Website and Services;
  - (d) any unauthorised access to or use of our secure servers and/or personal information and/or financial information stored on those servers;
  - (e) any interruption or cessation of transmission to or from the Website; and/or
  - (f) any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted to or through our Website by any third party.
- 18.2. The Website and Services are provided on an 'as is' basis, and neither we nor any of our affiliates make any representations or warranties of any kind, express or implied, including without limitation any implied warranties of fitness for purposes, merchantability, or non-infringement of third party rights. Implied warranties arising from our dealings or normal trade usage are expressly excluded. You enter into this Participation Agreement based on your own investigations, and we make no representation or warranty that the Website or Services will be suitable for your requirements, secure or accessible, or provided free from interruption or error.
- 18.3. Where any law (including the Australian Consumer Law) provides a guarantee which may not be lawfully excluded, our liability will be limited to that provided by law.
- 18.4. To the maximum extent possible at law, in no event shall we, our affiliates and related entities or our suppliers be liable for any loss or any special, incidental or consequential loss or damage arising out of or in connection with our Website or this Participation Agreement (however arising, including negligence), including but not limited to loss of profits, loss of future earnings, loss of opportunity or loss of goodwill, however incurred, whether direct or indirect. You agree to accept sole responsibility for the legality of your actions under the laws that apply to you. You agree that we, our affiliates and related entities or our suppliers have no responsibility for the legality of your actions.

## **19. Indemnity and Release**

- 19.1. You will at all times indemnify, and keep indemnified and hold harmless us and our directors, officers, employees, affiliates and agents from and against any, loss, damage, expense (including reasonable legal costs and expenses) or liability incurred or suffered by you or by us arising from any claim, demand, suit, action or proceeding by any person against you or us where such loss or liability arose out of, in connection with or in respect of:

- (a) your conduct or breach of this Participation Agreement;
  - (b) any actual or alleged breach of any third party's Intellectual Property Rights;
  - (c) the sale, offering for sale and supply of goods by you pursuant to this Participation Agreement;
  - (d) any breach of any law by you, including but not limited to the Australian Consumer Law contained in Schedule 3 of the Competition and Consumer Act 2010;
  - (e) any Risk or recall, or action taken by us under clause 12;
  - (f) any act or omission by you.  
("Loss" or "Losses")
- 19.2. We are not a party to the transactions between you and buyers of your goods using our Website. If a dispute arises between you and a buyer of your goods or services, you release us and our directors, officers, employees, affiliates and agents from and against any, loss (including reasonable legal costs and expenses) or liability incurred or suffered by you or by us arising from any claim, demand, suit, action or proceeding by any person in connection with such dispute.
- 19.3. We may deduct as a liquidated sum any Losses incurred from funds held under your Seller account.

## **20. Termination**

- 20.1. Without any derogation to any accrued rights, we may, at our absolute discretion, terminate this Participation Agreement at any time and cease providing the Services without notice.
- 20.2. In addition, we may terminate or suspend your account for breach of this Participation Agreement (including any of our published policies).
- 20.3. In the event this Participation Agreement terminates for whatever reason:
- (a) all Fees, Authorised Deductions and any other agreed payments or charges owing to us by you will become immediately due and payable and will be deducted by us from for your transactions. In the event of any shortfall, you must pay us immediately and on demand the amount of any shortfall;
  - (b) your listings will be removed from the website;
  - (c) you will still be required to fulfil pending orders to customers and comply with all legal obligations relating to your goods.
- 20.4. Clauses which are expressed to or by their nature survive termination of this Participation Agreement shall do so, including but not limited to clauses 10, 12, 15, 17, 18 and 19.
- 20.5. If your account suspended or terminated for breach and is subject to clause 10, we may hold the amount left in your Seller Indemnity Fund for up to 6 months.

- 20.6. You may cease selling your goods on the Platform at any time. Should you cease selling goods on the Platform, you will still be bound by any accrued obligations you have under this Participation Agreement.

## **21. Entire Agreement**

- 21.1. This Participation Agreement, our Privacy Policy, general Marketplace Terms and Conditions and all of our policies incorporated by reference form the entire agreement between the parties in relation to the subject matter of this Participation Agreement, and supersedes all prior agreements, representations and understandings between the parties, whether written or oral.

## **22. Relationship between the parties**

- 22.1. Subject to clause 5, the parties to this Participation Agreement are independent contractors and nothing in this Participation Agreement shall be construed to create a joint venture, partnership or agency relationship between us.

## **23. Severability**

- 23.1. If any provision of this Participation Agreement is deemed to be unlawful or otherwise unenforceable, then that provision shall be read down or severed from these terms and shall have no effect on the remaining terms of this Participation Agreement.

## **24. Waiver**

- 24.1. Our delay or omission to enforce or exercise a right under this Participation Agreement shall not constitute a waiver of that right unless expressly waived in writing by us.

## **25. Governing law**

- 25.1. This Participation Agreement, including all documents incorporated by reference, shall be construed in accordance with the laws in force in the State of Victoria, Australia and the parties (subject to clause 26) irrevocably submit to the jurisdiction of the courts sitting in Melbourne, Victoria, Australia.

## **26. Resolution of disputes**

- 26.1. Any dispute or controversy arising from this Participation Agreement that cannot first be settled by mutual negotiation between the parties must, prior to the issue of any formal legal proceedings in a court, must be submitted to a binding arbitration in accordance with and subject to the Resolution Institute Arbitration Rules. Unless the parties agree on



an arbitrator, wither party may request a nomination from the Chair of the Resolution Institute.

- 26.2. The place for any arbitration conducted in relation to this Participation Agreement shall be in Melbourne, Australia and all proceedings shall be conducted in English.

## 27. Definitions

- 27.1. **Business Day** means Monday to Friday between the hours of 9.00am to 5.00pm in Melbourne, Victoria, excluding Victorian public holidays.
- 27.2. **Customer Database** means the database of information held by Catch.com.au regarding its customers including but not limited to name, email address, shipping address and order history.
- 27.3. **Dispute** means where a customer dispute is raised with us through our Customer Dispute Process requiring a decision by Catch on the customer's query.
- 27.4. **Dispute Rate** means the number of Disputes as a percentage of total orders.
- 27.5. **GST** means Goods and Services Tax under the GST Act.
- 27.6. **GST Act** means the *A New Tax System (Goods and Services) Tax Act 1999* as amended or replaced from time to time.
- 27.7. **Incident** means a customer complaint or query in relation to an order that requires resolution by the Seller as measured by our internal processes and excludes any queries of a general nature.
- 27.8. **Incident Rate** means the number of incidents as a percentage of total orders.
- 27.9. **Intellectual Property Rights** means any copyright, moral rights, trade marks (registered or unregistered), designs, patents under any applicable law or common law in any jurisdiction or any other rights in relation to intellectual property.
- 27.10. **Sales Proceeds** means the amount actually paid by the Buyer (including shipping charges) for your specific goods sold on the Platform.
- 27.11. **Seller Fees** means the fees we charge you for the Services, which are set out in your account page.
- 27.12. **Seller Rating System** means the seller review rating based on customer feedback used by Catch.com.au to measure customer satisfaction with a Seller.
- 27.13. **Services** means the Platform services we provide in accordance with this agreement.