

## **SHOP.COM GIFT CARD TERMS & CONDITIONS**

The following terms and conditions govern your use of the SHOP.COM Gift Card ("Terms and Conditions"). By purchasing or using the SHOP.COM Gift Card, you are agreeing to these Terms and Conditions. The terms "you" and "your" refer to the person who purchased the SHOP.COM Gift Card and/or the person who is using the SHOP.COM Gift Card. The terms "we", "our", "us" and "Market Australia" refer to Market Australia, Inc. The term "Gift Card" refers to the SHOP.COM Gift Card.

### **1. THE GIFT CARD**

The Gift Card is a prepaid payment device that comes with a set dollar value. It is not a credit card, charge card or debit card. Purchases are deducted from the Gift Card balance. The value of the funds available on the Gift Card at any given time is referred to in these Terms and Conditions as the "Available Funds." The Gift Card can be redeemed through the SHOP.COM website, toward the purchase of Market Australia products and selected products as advertised by us from time to time. Gift Cards cannot be redeemed through certain third-party sellers on SHOP.COM, and cannot be used to purchase other Gift Cards. Gift Cards are not redeemable for cash or credit except where required by law. Once purchased, Gifts Cards cannot be returned for any reason. Gift Card sales are final and not refundable. Gift Cards must be activated before they are redeemed and are non-transferable after activation.

### **2. INFORMATION ABOUT AVAILABLE FUNDS ON THE GIFT CARD**

The Gift Card has no redeemable value until it is activated. As you use the Gift Card, the Available Funds will be reduced by the full amount of each purchase including taxes, and any other fees. Once the Available Funds are depleted, the Gift Card is no longer valid. Gift Cards cannot be reloaded.

### **3. LOST OR STOLEN CARDS**

YOU AGREE TO SAFEGUARD YOUR GIFT CARD AND TREAT IT LIKE CASH. We encourage you to activate your Gift Card immediately after receiving your purchase confirmation email. If your Gift Card information is, stolen or used improperly, you should immediately notify Customer Service by calling 1.800.750.016. You must provide the Gift Card number and other identifying details. We cannot provide a replacement card if you do not have your Gift Card number and you have not activated your card prior to the

loss. If you do not have your Gift Card number but you have activated your Gift Card and our records show that there are still Available Funds remaining on the Gift Card, we will cancel the Gift Card and email you a replacement Gift Card. The replacement Gift Card will be in the amount of Available Funds on your lost/stolen Gift Card at the time you notified us that it was lost/stolen. NO REFUNDS WILL BE PROVIDED FOR AMOUNTS DEBITED FROM YOUR LOST/STOLEN GIFT CARD BEFORE YOU PROPERLY NOTIFY US.

#### **4. USING THE GIFT CARD**

You agree to use the Gift Card only for lawful purposes. You authorize us to deduct the full amount of each purchase including taxes and any other fees from the Available Funds whenever your Gift Card is used to make a purchase. You agree to keep track of the Available Funds on your Gift Card. The Gift Card is not transferable and you agree not to permit any other person to use your Gift Card after it is activated. If you believe your Gift Card information has been lost or stolen, you should promptly go to SHOP.COM and follow the instructions. You acknowledge that purchases made with prepaid cards, such as the Gift Card, are similar to those made with cash. You cannot "stop payment" or lodge a "billing dispute" on such transactions.

#### **5. RETURNING MERCHANDISE**

PLEASE BE AWARE OF ALL APPLICABLE RETURN POLICIES PRIOR TO COMPLETING THE TRANSACTION. If you wish to return any merchandise purchased with a Gift Card, you will be subject to all applicable return policies. If you are issued a credit on SHOP.COM, such funds may not be available for 3 to 7 days.

#### **6. DISCLAIMER OF WARRANTIES**

**YOU EXPRESSLY AGREE THAT YOUR USE OF THE GIFT CARD IS AT YOUR SOLE RISK. THE GIFT CARD IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MARKET AUSTRALIA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MARKET AUSTRALIA SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.**

## **7. LIMITATION OF LIABILITY**

**YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER MARKET AUSTRALIA, NOR ANY OF ITS RESPECTIVE AFFILIATES, LICENSORS, OR SUPPLIERS TO THE EXTENT PERMITTED BY LAW SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES RESULTING FROM THE USE OF THE GIFT CARD ANY OTHER MATTER RELATING TO THE SITE EVEN IF MARKET AUSTRALIA OR ANY OF ITS RESPECTIVE AFFILIATES, LICENSORS, OR SUPPLIERS ARE ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES, LOSSES OR EXPENSES.**

## **8. INDEMNIFICATION**

You agree to indemnify and hold Market Australia, its parents, subsidiaries, affiliates, officers and employees, harmless from any claim, demand, or damage, including reasonable attorneys' fees, asserted by any third party due to or arising out of your use of the Gift Card.

## **9. CHANGING THESE TERMS AND CONDITIONS / NOTICES / GIFT CARD CANCELLATION**

We may change the terms of, or add new terms to, these Terms and Conditions at any time, with or without cause, and without giving you notice, in accordance with applicable law. In addition, we may suspend, cancel, add, modify or delete any feature offered in connection with your Gift Card at our sole discretion at any time, with or without cause, and without giving you notice, subject to applicable law. If we cancel your Gift Card, any Available Funds remaining on the Gift Card upon such cancellation, after payment for all applicable fees, will be returned to you.

## **10. ASSIGNMENT AND WAIVER**

We may assign these Terms and Conditions to a third party at any time without notice to you. However, if we assign these Terms and Conditions, the terms will remain substantially and materially the same unless you are notified. In the event we reimburse you for a refund claim you have made for a lost or stolen Gift Card, or if we otherwise provide you with a credit or payment with respect to any problem arising out of any transaction made with the Gift Card, you are automatically deemed to assign and

transfer to us any rights and claims, excluding tort claims, that you have, had or may have against any third party for an amount equal to the amount we have paid to you or credited to your Gift Card. You agree that you will not pursue any claim against, or reimbursement from, such third party for the amount that we paid or credited to your Gift Card, and that you will cooperate with us if we decide to pursue the third party for the amount paid or credited. Neither our failure to exercise any of our rights under these Terms and Conditions, nor our delay in enforcing or exercising any of our rights, shall constitute a waiver of such rights. Furthermore, if we waive any right under these Terms and Conditions on one occasion, such waiver shall not operate as a waiver as to any other occasion.

## **11. DATA PROTECTION AND PRIVACY**

All purchases are subject to our Privacy Policy, which can be found at SHOP.COM. Please review our Privacy Policy, which also governs your visit to SHOP.COM, unless otherwise noted.

## **12. APPLICABLE LAW**

- a. SHOP.COM Gift Card Terms and Conditions apply to all purchases made on SHOP.COM using a SHOP.COM Gift Card. These Terms and Conditions and your Gift Card, and all questions about their legality, enforceability and interpretation, are governed by the laws of New South Wales (without regard to internal principles of conflicts of law). You hereby irrevocably consent to the exclusive jurisdiction and venue of courts in Sidney, NSW in all disputes arising out of or relating to the use of your Gift Card.

## **13. GENERAL PROVISIONS**

- a. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Market Australia as a result of these Terms and Conditions or your use of the Gift Card.
- b. We reserve the right to disclose any personal information about you or your use of the Gift Card without your prior permission, if we have a good faith belief that such action is necessary to: (1) conform to legal requirements or comply with legal process; (2) protect and defend the rights or property of Market Australia or its affiliated companies; (3) enforce these Terms and Conditions; or (4) act to protect the interests of its Independent Distributors, employees,

principals or other business partners.

- c. If any part of these Terms and Conditions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Terms and Conditions shall continue in effect.
- d. Unless otherwise specified herein, these Terms and Conditions constitute the entire agreement between you and us with respect to the Gift Card and these Terms and Conditions supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us with respect to the Gift Card.
- e. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

**Updated January, 24<sup>th</sup> 2013**