

Alchemy Agencies Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Alchemy" means Alchemy Agencies Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Alchemy Agencies Pty Ltd.</p> <p>1.2 "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by Alchemy to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Alchemy and the Customer in accordance with clause 5 below.</p> <p>1.5 "GST" means Goods and Services Tax (GST) as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Alchemy.</p> <p>3. Electronic Transactions Act 2000</p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have consented to the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give Alchemy not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by Alchemy as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At Alchemy's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by Alchemy to the Customer; or</p> <p>(b) the Price as at the date of delivery of the Goods according to Alchemy's current price list; or</p> <p>(c) Alchemy's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 Alchemy reserves the right to change the Price if a variation to Alchemy's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or in the cost of Alchemy's services, levies, raw materials, and labour) will be charged for on the basis of Alchemy's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Alchemy within ten (10) working days. Failure to do so will entitle Alchemy to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.3 At Alchemy's sole discretion a deposit may be required.</p> <p>5.4 Time for payment for the Goods being the essence, the Price will be payable by the Customer on the date/s determined by Alchemy, which may be:</p> <p>(a) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(b) the date specified on any invoice or other form as being the date for payment; or</p> <p>(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Alchemy.</p> <p>5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Alchemy.</p> <p>5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Alchemy nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Alchemy an amount equal to any GST Alchemy must pay for any supply by Alchemy under this or any other agreement for the sale of the Goods. The Customer must pay GST without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Alchemy's address or</p> <p>(b) Alchemy (or Alchemy's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.</p> <p>6.2 At Alchemy's sole discretion the cost of delivery is included in the Price.</p> <p>6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Alchemy shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>6.4 Alchemy may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.5 Any time or date given by Alchemy to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Alchemy will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Alchemy is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Alchemy is sufficient evidence of Alchemy's rights to receive the insurance proceeds without the need for any person dealing with Alchemy to make further enquiries.</p> <p>7.3 If the Customer requests Alchemy to leave Goods outside Alchemy's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>7.4 Any advice, recommendation, information, assistance or service provided by Alchemy in relation to Goods or Services supplied is given in good faith, is based on Alchemy's own knowledge and experience and shall be accepted without liability on the part of Alchemy and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.</p> <p>8. Title</p> <p>8.1 Alchemy and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid Alchemy all amounts owing to Alchemy; and</p> <p>(b) the Customer has met all of its other obligations to Alchemy.</p> <p>8.2 Receipt by Alchemy of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>8.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Alchemy on request.</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Alchemy and must pay to Alchemy the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Alchemy and must pay or deliver the proceeds to Alchemy on demand.</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Alchemy and must sell, dispose of or return the resulting product to Alchemy as it so directs.</p> <p>(e) the Customer irrevocably authorises Alchemy to enter any premises where Alchemy believes the Goods are kept and recover possession of the Goods.</p> <p>(f) Alchemy may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Alchemy.</p> <p>(h) Alchemy may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p>	<p>9. Personal Property Securities Act 2009 ("PPSA")</p> <p>9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Alchemy to the Customer.</p> <p>9.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Alchemy may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, Alchemy for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of Alchemy;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Alchemy;</p> <p>(e) immediately notify the Alchemy of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>9.4 Alchemy and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>9.7 Unless otherwise agreed to in writing by Alchemy, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>9.8 The Customer must unconditionally ratify any actions taken by Alchemy under clauses 9.3 to 9.5.</p> <p>9.9 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>10. Security and Charge</p> <p>10.1 In consideration of Alchemy agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>10.2 The Customer indemnifies Alchemy from and against all Alchemy's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Alchemy's rights under this clause.</p> <p>10.3 The Customer irrevocably appoints Alchemy and each director of Alchemy as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.</p> <p>11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Alchemy in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Alchemy to inspect the Goods.</p> <p>11.2 Notwithstanding clause 11.4, failure by the Customer to give Alchemy written notice of a claim within thirty (30) days of delivery of the Goods (or in the case of non-delivery, from the agreed delivery date) shall constitute a waiver by the Customer of all claims in respect of such Goods.</p> <p>11.3 The Customer must inspect the Territory and Commonwealth Law (including, without limitation the CCA, any statutory implied warranties and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>11.4 Alchemy acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>11.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, and except that the Goods shall meet Alchemy's standard sales specifications, Alchemy makes no warranties or other representations under these terms and conditions, whether of fitness or against any infringement or otherwise, including, but not limited to, the quality or suitability of the Goods. Alchemy's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>11.6 Subject to the provisions of section 64A of Schedule 2 of the CCA, the Customer assumes all risk as to the result of the use of Goods supplied by Alchemy, whether used singly or in combination with other goods or substances.</p> <p>11.7 If the Customer is a consumer within the meaning of the CCA, Alchemy's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>11.8 If Alchemy is required to replace the Goods under this clause or the CCA, but is unable to do so, Alchemy may refund any money the Customer has paid for the Goods.</p> <p>11.9 If the Customer is not a consumer within the meaning of the CCA, Alchemy's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by Alchemy at Alchemy's sole discretion;</p> <p>(b) limited to any warranty to which Alchemy is entitled, if Alchemy did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>11.10 Subject to this clause 11, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 11.1; and</p> <p>(b) Alchemy has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>11.11 Notwithstanding clauses 11.1 to 11.10 but subject to the CCA, Alchemy shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by Alchemy;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>11.12 Notwithstanding anything contained in this clause if Alchemy is required by a law to accept a return then Alchemy will only accept a return on the conditions imposed by that law.</p> <p>12. Default and Consequences of Default</p> <p>12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Alchemy's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>12.2 If the Customer owes Alchemy any money the Customer shall indemnify Alchemy from and against all costs and disbursements incurred by Alchemy in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, Alchemy's contract default fee, and bank dishonour fees).</p> <p>12.3 Further to any other rights or remedies Alchemy may have under this contract, if a Customer has made payment to Alchemy, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Alchemy under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.</p> <p>12.4 Without prejudice to Alchemy's other remedies at law Alchemy shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Alchemy shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Alchemy becomes overdue, or in Alchemy's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by Alchemy;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>	<p>13. Cancellation</p> <p>13.1 Without prejudice to any other remedies Alchemy may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Alchemy may suspend or temporarily terminate the supply of Goods to the Customer. Alchemy will not be liable to the Customer for any loss or damage the Customer suffers because Alchemy has exercised its rights under this clause.</p> <p>13.2 Alchemy may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Alchemy shall repay to the Customer any money paid by the Customer for the Goods. Alchemy shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>13.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Alchemy as a direct result of the cancellation (including, but not limited to, any loss of profit).</p> <p>13.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>14. Privacy Act 1988</p> <p>14.1 The Customer agrees for Alchemy to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Alchemy.</p> <p>14.2 The Customer agrees that Alchemy may exchange information about the Customer with third parties and with related credit controllers for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.</p> <p>14.3 The Customer consents to Alchemy being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>14.4 The Customer agrees that personal credit information provided may be used and retained by Alchemy for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>14.5 Alchemy may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer for credit reporting purposes;</p> <p>14.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 14.1 above;</p> <p>(b) name of the credit provider and that Alchemy is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Alchemy has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of Alchemy, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>14.7 The Customer shall have the right to request (by e-mail) from Alchemy:</p> <p>(a) a copy of any information about the Customer retained by Alchemy and the right to request that Alchemy correct any incorrect information; and</p> <p>(b) that Alchemy does not disclose any personal information about the Customer for the purpose of direct marketing.</p> <p>14.8 Alchemy will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>14.9 The Customer can make a privacy complaint by contacting Alchemy via e-mail. Alchemy will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>15. Service of Notices</p> <p>15.1 Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>15.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>16. Dispute Resolution</p> <p>16.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>17. General</p> <p>17.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales the state in which Alchemy has its principal place of business, and are subject to the jurisdiction of the courts in New South Wales.</p> <p>17.3 Subject to clause 11 Alchemy shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Alchemy of these terms and conditions (alternatively Alchemy's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>17.4 Alchemy may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.</p> <p>17.5 The Customer cannot licence or assign without the written approval of Alchemy.</p> <p>17.6 Alchemy may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Alchemy's sub-contractors without the authority of Alchemy.</p> <p>17.7 The Customer agrees that Alchemy may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer may further request for Alchemy to provide Goods to the Customer.</p> <p>17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>17.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
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