

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

AUCTION ALLIANCE PTY LTD
ACN 096 509 134

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given by Auction Alliance Pty Ltd trading as Deals Direct Australia, ACN 096 509 134, (**Auction Alliance**) of GMK Centric Pty Ltd, Level 2, 7-15 Macquarie Place, Sydney, New South Wales, to the Australian Competition and Consumer Commission (ACCC) under section 87B of the *Trade Practices Act 1974* (Cth) (**the Act**).

BACKGROUND

2. Auction Alliance is incorporated under the *Corporations Act 2001* (Cth) and is registered in New South Wales.
3. Auction Alliance was registered in 2001 and operated the 'Auction Brokers' store on eBay. On 25 February 2004, Auction Alliance registered the business name Deals Direct Australia (BN98039759). On 1 October 2004 Auction Alliance started operating via its newly formed website at URL www.dealsdirect.com.au (**the Deals Direct Website**).
4. Auction Alliance sells a wide variety of goods via the Deals Direct Website including kitchen items, electrical goods, jewellery, furniture, manchester, toys, sporting equipment, alcohol and pet products.
5. Section 52 of the Act provides that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
6. Section 53(a) of the Act provides that a corporation shall not, in trade or commerce, in connexion with the supply or possibly supply of goods or services falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use.

7. Section 53(c) of the Act provides that a corporation shall not, in trade or commerce, in connexion with the supply or possibly supply of goods or services falsely represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have.
8. Section 53(g) of the Act provides that a corporation shall not, in trade or commerce, in connexion with the supply or possibly supply of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.
9. In addition to 'voluntary' or 'extended' warranties offered by manufacturers and suppliers, Part V Division 2 of the Act implies conditions and warranties into contracts for the supply of goods to consumers, including for example that goods be of merchantable quality (section 71(1)) and fit for their intended purpose (section 71(2)). If an implied condition or warranty is not met, the consumer is entitled to a remedy from the supplier for breach of contract. Where there is a breach of a statutory condition the consumer may have a right to rescind the contract under section 75A of the Act and obtain a refund from the supplier. Except in certain circumstances relating to the supply of goods that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, a contractual term cannot purport to exclude, restrict or modify a corporation's liability for breach of a statutory condition or warranty.

PREVIOUS CONDUCT OF CONCERN

10. The ACCC wrote to Auction Alliance on 3 August 2006 as a result of an 'internet sweep'. The ACCC advised Auction Alliance that it was concerned the following statements on the Deals Direct Website may mislead consumers about their statutory rights and thus breach sections 52 and 53(g) of the Act:
 - *If you believe that your product is [Dead on Arrival], you must contact us within 14 calendar days from the date that the product was dispatched.*
 - *If a defect arises after delivery and a valid claim is received by Customer Services within 30 days of delivery, Deals Direct will exchange the product where possible, or refund you the purchase price of the product.*
 - *Where we supply a product to you with a manufacturer's warranty packaged with the product, the Deals Direct limited warranty does not apply.*
 - *These Terms and Conditions set out the full extent of our obligations and liabilities ... Any warranty, condition or other term ... which might otherwise be implied into or incorporated in these Terms and Conditions by statute, common law or otherwise (including without limitation any implied term as to quality or fitness for purpose) is hereby expressly excluded.*
11. Auction Alliance responded by email to the ACCC on 28 August 2006 advising that it was committed to fully complying with the Act and would

respond swiftly and satisfactorily to address the points outlined in the ACCC's correspondence.

LATEST CONDUCT OF CONCERN

Statements on the Deals Direct Website

12. Over 2006 / 2007 Auction Alliance published the following statements about product warranties and consumers' available rights on the Deals Direct Website:

a. In its terms and conditions and in the 'Help Centre' section of its website it published statements to the effect that:

- where a good is damaged or faulty the consumer is only entitled to a remedy if they make a claim within 30 days from the date of dispatch by Deals Direct and no further warranty is available, which may lead a consumer to infer that:
 - i. their rights are temporally limited and they would have no further recourse after 30 days; and;
 - ii. they have no right of recourse if the product, for example, does not correspond with the description of the good on the Website or is unfit for its intended purpose;
- the consumer will only be entitled to a refund if a replacement product cannot be provided by Deals Direct;
- the consumer is required to pay any freight costs incurred in returning the faulty good to Deals Direct if it is returned after 30 days from the date of original dispatch by Deals Direct; and
- in the case of some products (e.g. HoMedics, Binatone, NEC, Sunbeam and BenQ products) Deals Direct does not provide *any* warranty and consumers must deal directly with the supplier or manufacturer.

b. In its terms and conditions it attempted to limit its obligations under the Act by stating:

Under the Trade Practices Act 1974 ("Act"), where implied conditions and warranties cannot be excluded, any liability in Deals Direct for breach of such conditions and warranties (other than a condition or warranty implied by section 69 of the Act) shall be limited, at the option of Deals Direct, to the replacement of the Product(s) or the re-supply of the same Product(s); the payment of the cost of replacing the Product(s) or of acquiring equivalent Product(s)...

13. In February 2008 Auction Alliance launched a self-service warranty centre on the Deals Direct Website. When consumers attempted to lodge a warranty claim for products outside the alleged 30 day “warranty period” (or for products that were allegedly only covered by a manufacturer’s warranty), consumers received the following automated message:

The warranty of [product] has expired

Unfortunately, the warranty for this product has expired.

Once your product’s warranty has expired, we are unable to offer a replacement. Our warranty and returns policies are displayed in our Help Centre, and on the product information pages.

If you require further assistance for products which are out of warranty, we suggest that you contact a local specialist. We also recommend the Deals Direct Websites of manufacturers where applicable.

14. By letter dated 17 June 2009, the ACCC wrote to Auction Alliance expressing concern about a large number of complaints involving the following alleged conduct which raised concerns under sections 52, 53(a), 53(c) and 53(g) of the Act:
- a. that Auction Alliance refused to provide consumers with a remedy when products purchased from the Deals Direct Website developed a fault after 30 days from the date of purchase (as per the terms and conditions on the Deals Direct Website described in paragraph 12.a above);
 - b. that Auction Alliance supplied consumers with goods that did not match the description on the Deals Direct Website and refused to provide a remedy when consumers complained; and
 - c. that the recommended retail prices and manufacturer’s recommended retail prices attributed to products on the Deals Direct Website and the claimed savings available to consumers were not genuine.
15. Following subsequent communications between the ACCC and Auction Alliance, Auction Alliance advised:
- a. it had removed all recommended retail prices and manufacturer’s recommended retail prices from the Deals Direct Website and would not utilise these in the future;
 - b. it had redrafted its terms and conditions including its warranty and returns policy and, subject to any unforeseen circumstances, would implement them onto the Deals Direct Website by 22 September 2009. FAQs and information on product pages would also be updated to ensure they were consistent with the new terms and conditions;

- c. it had made changes to the self-service warranty centre so that consumers no longer received the automated response described in paragraph 13 above;
- d. it was preparing a new Trade Practices Compliance Manual and would provide a copy to the ACCC by 31 October 2009;
- e. it had appointed a compliance manager who would monitor the revision and implementation of the trade practices compliance measures including staff training;
- f. in May 2009 it implemented a listings template and photographers' guidelines to help ensure the product information on the Deals Direct Website was accurate and reduce the risk that photographs of products were misleading; and
- g. it would appoint a quality assurance manager who would be responsible for checking all products received and ensuring product listings on the Deals Direct Website were accurate.

Misrepresentations of Manufacturer's Warranty

- 16. Between 12 March 2009 and 28 May 2009 Auction Alliance advertised the 'Ultimate Pilates Workout Chair' (**the UPW Chair**) on the Deals Direct Website. Auction Alliance sold 165 units during this period.
- 17. The UPW Chair was supplied with materials branded 'Malibu Pilates' and containing references to the business name Guthy-Renker (**the GR Materials**) including a document headed 'Malibu Pilates Limited Manufacturing Warranty' containing the following statements:

Your Malibu Pilates™ machine is covered by a limited warranty against manufacturing defects in materials and workmanship...

To submit a warranty claim, call the Malibu Pilates™ Customer Service number listed on your invoice. If you return your product under the terms of warranty, Guthy-Renker® will either provide a replacement part for you to install or attach, or replace the entire machine at our option. We will pay to replace parts or product covered by this warranty...

- 18. The 'Malibu Pilates Chair' (**the GR Chair**) is supplied in Australia by Guthy-Renker Australia Pty Ltd (**GRA**).
- 19. The UPW Chair was not manufactured or supplied by GRA or any companies related to GRA.
- 20. By letter dated 14 September 2009, the ACCC wrote to Auction Alliance expressing concern that Auction Alliance may have contravened sections 52 and 53(g) of the Act. The ACCC was concerned that by supplying the UPW

Chair with the GR Materials including the 'Malibu Pilates Limited Manufacturing Warranty' it may have caused consumers to infer that the product was manufactured by GRA and that they could have recourse against GRA in the event the UPW Chair was faulty, when this was not the case.

21. By letter dated 15 September 2009, Auction Alliance:
 - a. confirmed the UPW Chair was not manufactured or supplied by GRA;
 - b. advised the manufacturer of the UPW Chair was responsible for the inclusion of the GR Materials with the UPW Chair;
 - c. advised that the UPW Chair was never listed on the Deals Direct Website as being the GR Chair or a GRA product and consumers who purchased the UPW Chair would have been unaware of the GR Materials until after they purchased and received the UPW Chair;
 - d. advised that as a result of this problem Auction Alliance has changed its business model to cease obtaining supplies of generic brands and has instead decided to parallel import branded products;
 - e. advised that it is willing to contact all customers who purchased the UPW Chair advising them of this issue and advising that Auction Alliance will honour the terms of the 'Malibu Pilates Limited Manufacturing Warranty' (in addition to statutory warranties) in the event the UPW Chair is faulty. Auction Alliance will also offer to provide a refund if the customer prefers to return the UPW Chair.

Admission of Contraventions

22. The ACCC considers, and Auction Alliance admits, that by virtue Auction Alliance's conduct as detailed in paragraphs 12, 13, 16 and 17 of this Undertaking it had engaged in misleading and deceptive conduct in contravention of sections 52 and 53(g) of the Act.
23. In response to the ACCC's concerns regarding the conduct described above, Auction Alliance has offered this Undertaking under section 87B of the Act to the ACCC.

COMMENCEMENT OF UNDERTAKING

24. This Undertaking comes into effect when:
 - a. The Undertaking is executed by Auction Alliance; and
 - b. The ACCC accepts the Undertaking so executed.

UNDERTAKINGS

Commitment to cease and not recommence the conduct

25. Auction Alliance undertakes to the ACCC for the purposes of section 87B of the Act that, whether by itself or by the conduct of its directors, servants, agents or associates, for a period of three (3) years from the date of this Undertaking coming into effect it will not:

- a. make false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy, including any representation that:
 - i. a consumer will not be entitled to any remedy for a faulty or defective product in any circumstances on the expiry of 30 days after the purchase or dispatch of the product;
 - ii. consumers are not entitled to a remedy in any circumstances where:
 - 1. a product is supplied by description and the product does not comply that description;
 - 2. the purpose for a product is made known and the product is not fit for that purpose; and
 - 3. a product is supplied by sample and the product does not comply that sample;
 - iii. consumers will only be entitled to a refund for faulty or defective products if a replacement product cannot be supplied in circumstances where the consumer may be entitled to a refund under the Act;
 - iv. consumers' remedies for a faulty or defective product are limited to those available pursuant to any voluntary or extended warranties offered by Auction Alliance and/or the product's manufacturer in circumstances where the consumer may be entitled to the benefit of conditions and warranties implied by the Act;
 - v. in relation to a product that it supplies to a consumer, the consumer is not entitled to any remedy against it in any circumstances where the consumer may be entitled to the benefit of conditions and warranties implied by the Act;
- b. impose or seek to impose a term in any contract for the supply of goods by it to a consumer, except a contract for the supply of goods that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, that purports to exclude, restrict or modify its liability for breach of a condition or warranty implied by Part V Division 2 of the Act; and

- c. represent that a product has been manufactured, imported or otherwise sourced from a person in circumstances where it is aware or reasonably ought to be aware that the product has not been manufactured, imported or otherwise sourced from that person.

Corrective notices

- 26. Auction Alliance undertakes to the ACCC for the purposes of section 87B of the Act that within 21 days of this Undertaking coming into effect and at its own expense, it will:
 - a. publish a corrective notice on the Deals Direct Website or if the URL is replaced or changed, the Internet home page of the corresponding website (**the Corresponding Website**) in the size and form set out in **Annexure B** to this Undertaking (**the Deals Direct Website Notice**) for a continuous period of 60 days and use its best endeavours to ensure that:
 - i. the Deals Direct Website Notice is viewable by clicking a 'click-through' icon located on the Deals Direct Website;
 - ii. the 'click-through' icon referred to in the previous sub-paragraph is located in the top third of the homepage of the Deals Direct Website and/or Corresponding Website;
 - iii. the 'click-through' icon contains the words "Click here for an important notice about your warranty rights" prominently in bold yellow font in a type not less than 12 point Times New Roman font, on a black background; and
 - iv. the Deals Direct Website Notice occupies the entire webpage that is accessed via the 'click-through' icon referred to above;
 - b. publish a 'click-through' link to the Deals Direct Website Notice referred to in paragraph 26.a above in every e-newsletter it sends to subscribed email addresses (**the Newsletter Link**) for a continuous period of not less than 60 days and use its best endeavours to ensure that:
 - i. the Newsletter Link is located in the top third of the e-newsletter; and
 - ii. the Newsletter Link contains the words "Click here for an important notice about your warranty rights" prominently in bold yellow font in a type not less than 12 point Times New Roman font, on a black background; and
 - c. publish and distribute a letter in the terms and form of **Annexure C** to all consumers who purchased a UPW Chair from the Deals Direct Website between 12 March 2009 and 28 May 2009 (**the UPW Chair Purchasers**).

This letter will be sent by post to the address that the UPW Chair was delivered to and by email to the customer's email address.

Consumer redress

27. Auction Alliance undertakes to the ACCC for the purposes of section 87B of the Act that at its own expense:
- a. it will assume the obligations that purport to be imposed upon GRA pursuant to the Malibu Pilates Limited Manufacturing Warranty, referred to in paragraph 17;
 - b. where a consumer claims a remedy from Auction Alliance on or before 31 December 2009 in respect of an allegedly faulty product, which was purchased from the Deals Direct Website between 1 September 2008 and the date of this Undertaking, irrespective of whether the consumer has previously made a claim in respect of that product, Auction Alliance will assess or reconsider the claim in accordance with its reformulated terms and conditions;
 - c. where a UPW Chair Purchaser notifies Auction Alliance, within 30 days of receiving the letter referred to in paragraph 26.c, of their election to return the UPW Chair and claim a refund, Auction Alliance will:
 - i. within 60 days of receiving the claim, pay an amount to the UPW Chair Purchaser that represents a refund of the purchase price and any postage expenses paid by the UPW Chair Purchaser for the UPW Chair; and
 - ii. ensure that any postage or other expenses that must be incurred to return the UPW Chair will be borne by Auction Alliance; and
 - d. by 31 January 2010 provide the ACCC with details of all claims made by consumers in accordance with the paragraphs 27.b and 27.c of this Undertaking including the nature of the claim, the determination made by Auction Alliance and the remedy provided by Auction Alliance (if any).

Trade Practices Compliance Program

28. Auction Alliance undertakes to the ACCC for the purposes of section 87B of the Act that, at its own expense:
- a. within two (2) months of the date of this Undertaking coming into effect, it will establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure A** for the directors, employees or other persons involved in Auction Alliance's business, being a program designed to minimise Auction Alliance's risk of future breaches of Part V of the Act;


- b. maintain and continue to implement the Trade Practices Compliance Program for a period of three (3) years from the date of this Undertaking coming into effect; and
- c. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure A**.

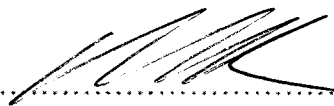
ACKNOWLEDGEMENTS

- 29. Auction Alliance acknowledges that the ACCC will make this Undertaking available for public inspection.
- 30. Auction Alliance further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
- 31. Auction Alliance further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 32. Auction Alliance further acknowledges that a summary of the Trade Practices Compliance Program Review Reports referred to in **Annexure A** of the Undertaking may be held with this Undertaking on the public register.

Executed by

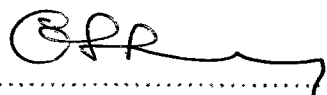
Auction Alliance Pty Ltd trading as Deals Direct Australia, ACN 096 509 134 pursuant to section 127(1) of the *Corporations Act* 2001 (Cth):


.....
Paul Dennis Greenberg
Director and Company Secretary


.....
Michael Alan Rosenbaum
Director

DATED this 9th day of October 2009

ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974


.....
Graeme Julian Samuel
Chairperson

DATED this 22nd day of October 2009

“Annexure A”
TRADE PRACTICES COMPLIANCE PROGRAM

Auction Alliance Pty Ltd trading as Deals Direct Australia, ACN 096 509 134 (**Auction Alliance**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. Appointments

- 1.1. Within one (1) month of the date of the Undertaking coming into effect Auction Alliance will appoint a director or a senior manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

2. Compliance Officer Training

- 2.1. Auction Alliance will ensure that, within two (2) months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V of the Act.
- 2.2. Auction Alliance shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 2.3. Auction Alliance, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

3. Staff Training

- 3.1. Auction Alliance will cause all employees of Auction Alliance whose duties could result in them being concerned with conduct that may contravene Part V of the Act to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified, compliance professional or legal practitioner with expertise in trade practices law, that focuses on Part V of the Act.

4. Complaints handling – Auction Alliance will:

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within two (2) months of the Undertaking coming into effect; and
- 4.2. provide the ACCC with an outline of the complaint handling system within two (2) months of the Undertaking coming into effect.
5. Auction Alliance will ensure that the Compliance Officer reports to their director(s) or governing body every six (6) months on the continuing effectiveness of the Compliance Program.

6. **Review** – Auction Alliance shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:
- 6.1. **Scope of the Review** – Auction Alliance shall ensure that the Review is broad and rigorous enough to:
- 6.1.1. provide Auction Alliance and the ACCC with a supportable verification that Auction Alliance has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Auction Alliance; and
 - 6.1.2. provide the Review Report and opinions detailed at point 7 below.
- 6.2. **Independence of Reviewer** – Auction Alliance shall ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
- 6.2.1. did not design or implement the Compliance Program;
 - 6.2.2. is not a present or past staff member or director of Auction Alliance;
 - 6.2.3. has not acted and does not act for Auction Alliance in any trade practices related matters;
 - 6.2.4. has not and does not act for or consult to Auction Alliance or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 6.2.5. has no significant shareholding or other interests in Auction Alliance.
- 6.3. **Evidence** – Auction Alliance shall use its best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Auction Alliance's possession or control, including without limitation:
- 6.3.1. enquiries of any employees, representatives, agents and stakeholders of Auction Alliance; and
 - 6.3.2. documents created by Auction Alliance's consultants, legal practitioners and accountants for use in Auction Alliance's Compliance Program.
- 6.4. Auction Alliance shall ensure that the first Review is completed within one (1) year and one (1) month of this Undertaking coming into effect and that each subsequent Review is completed within one (1) year thereafter.

7. Reporting

- 7.1. Auction Alliance shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
 - 7.1.1. details of the evidence gathered and examined during the Review;
 - 7.1.2. the name and relevant experience of the person appointed as Auction Alliance's Compliance Officer;
 - 7.1.3. the Reviewer's opinion on whether Auction Alliance has in place effective staff training and complaints handling programs that comply with the requirements of the Undertaking; and
 - 7.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Auction Alliance's Compliance Program.
- 7.2. Auction Alliance shall ensure that each Trade Practices Compliance Program Review Report is completed and provided to Auction Alliance within one (1) month of completion of the Review.
- 7.3. Auction Alliance will cause the Trade Practices Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 7.4. Auction Alliance shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Auction Alliance maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
8. If requested by the ACCC, Auction Alliance shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
9. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Auction Alliance shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Trade Practices Compliance Program Review Report to be provided to the ACCC.

**“Annexure B”
WEBSITE NOTICE**

Consumer Information Notice

An important message from Deals Direct to its customers

ABOUT CONSUMERS' WARRANTY RIGHTS

The Australian Competition and Consumer Commission (ACCC) has raised concerns with Auction Alliance Pty Ltd (trading as Deals Direct Australia) that the Deals Direct warranties and returns policy is likely to contravene the *Trade Practices Act 1974* (TPA).

The ACCC was concerned about statements by Deals Direct to the effect that:

- where a good is damaged or faulty the consumer is only entitled to a remedy if they make a claim within 30 days from the date of dispatch by Deals Direct and no further warranty is available; *(this is untrue; statutory rights are not limited to a set time period. Instead, they apply for the amount of time that is reasonable to expect, given the cost and quality of the good)*
- the consumer is required to pay any shipping costs incurred in returning the faulty good to Deals Direct if it is returned after 30 days from the date of original dispatch by Deals Direct; *(this is untrue; as noted above statutory rights are not limited to a set time period)*
- the consumer will only be entitled to a refund if a replacement product cannot be provided by Deals Direct; *(this is untrue; where a statutory condition has been breached the consumer may be entitled to insist on a refund)*
- in the case of some products (e.g. HoMedics, Binatone, NEC, Sunbeam and BenQ products) Deals Direct does not provide any warranty at all and consumers must deal directly with the supplier or manufacturer. *(this is incorrect; as each sale is a contract between the buyer and the seller, consumers are entitled to remedies against sellers, even if a problem is due to a manufacturer's fault)*

Deals Direct has revised its Terms and Conditions to resolve these concerns. The revised Terms and Conditions are available at <http://www.dealsdirect.com.au/terms-conditions/>.

Deals Direct has agreed to consider warranty claims for consumers who purchased items after 1 September 2008 that they believe are faulty. Therefore if you were denied a remedy by Deals Direct or did not make a warranty claim as you were misled by Deals Direct's representations, please contact Deals Direct via the Help Centre before 31 December 2009 and your warranty claim will be assessed.

The TPA implies statutory conditions into consumer contracts for goods and services. For example, goods must be of merchantable quality, be fit for their intended purpose and must match the description given to the consumer or the sample shown. Services must be carried out with due care and skill and materials supplied in connection with the service must be fit for the purpose with which they are supplied. For more information about your rights as a consumer, please visit the ACCC website at www.accc.gov.au or download a free copy of the Warranties and Refunds Guide at <http://www.accc.gov.au/content/index.php?id=322947>.

This Notice has been published by Deals Direct following an Undertaking given by it to the ACCC under s.87B of the Trade Practices Act 1974.

“Annexure C”
LETTER TO PURCHASERS OF THE UPW CHAIR

(Auction Alliance logo and letterhead)

(Date)

(To Auction Alliance customer)

Dear Sir / Madam,

False, misleading or deceptive conduct by Auction Alliance Pty Ltd trading as Deals Direct

Our records indicate that on (insert date) you purchased an Ultimate Pilates Workout Chair **(the UPW Chair)** from the Deals Direct website (www.DealsDirect.com.au).

It has come to our attention that the UPW Chair was supplied with DVDs and written materials branded ‘Malibu Pilates’ and containing references to the business name ‘Guthy-Renker’ including a document headed ‘Malibu Pilates Limited Manufacturing Warranty’.

The Malibu Pilates Chair is supplied in Australia by Guthy-Renker Australia Pty Ltd (**Guthy-Renker**). The UPW Chair that you purchased is not a Malibu Pilates Chair and was not manufactured or supplied by Guthy-Renker.

The Limited Manufacturing Warranty supplied with the UPW Chair suggested that it was covered by a limited warranty against manufacturing defects in materials and workmanship and that if you wanted to make a claim under this warranty you should contact Guthy-Renker. However, as Guthy-Renker did not manufacture or supply the UPW Chair it is not responsible for warranting the UPW Chair.

Auction Alliance apologises if you were misled and offers the following options to address its misleading conduct:

1. In the event that the UPW Chair develops a fault, Auction Alliance will provide a warranty on the UPW Chair on terms parallel to the terms of the Malibu Pilates Limited Manufacturing Warranty. Please note that the terms of this voluntary warranty apply in addition to the usual warranty rights you have against Auction Alliance under statute; or
2. You may elect to return the UPW Chair to Auction Alliance (at Auction Alliance’s expense) and obtain a full refund (including postage).

If you elect to return the UPW Chair, please notify Auction Alliance within 30 days of receiving this letter.

Please note that this letter relates to your warranty rights. It is not a product recall.

Auction Alliance has provided a court enforceable undertaking to the Australian Competition and Consumer Commission that it will not engage in false, misleading and deceptive conduct in the future and it will implement policies and procedures designed to prevent similar conduct occurring again.

Yours sincerely,

(Signature of Paul Greenberg, Director)