

1. Quotes, orders and acceptance

- 1.1 All quotes are subject to this document and are valid for 30 days unless another time is stated. A quote does not constitute an offer capable of acceptance. We can withdraw the quote at any time.
- 1.2 If you purport to accept a quote by:
- signing and returning a quote or these terms at **clause 13**;
 - seeking goods or services from us after receiving this document;
 - submitting a purchase order to us, whether or not it notes our quote number; or
 - paying any money to us, including paying a deposit,
- it constitutes an offer by you to acquire goods and/or services from us on the basis set out in the quote and this document and we may accept that offer.
- 1.3 The terms and conditions in this document will apply to any such purchase order from you to the absolute exclusion of any purported terms or conditions as stated on the purchase order and will apply to any further dealings between us unless we otherwise agree.
- 1.4 We may require payment of a deposit for any order.
- 1.5 If you are an individual, by accepting a quote or doing any act or thing described in **clause 1.2** above, you warrant that you are authorised to accept the terms and conditions in this document on behalf of the relevant person or entity named on the quote or purchase order.
- 1.6 If you are an employee or officer of a company, trustee of a trust, partner in a partnership or an agent for third party, then you warrant to us that you are irrevocably authorised to act as their agent and personally indemnify us from all claims we may have against the party for whom you are acting.

2. Shortage and returns

- 2.1 You must inspect the goods immediately upon delivery or upon collection by you or on your behalf.
- 2.2 Details of any goods as recorded by us upon dispatch will be conclusive evidence of the goods and their quantity received by you on delivery and in good condition unless you provide evidence reasonably satisfactory to us proving the contrary within 7 days of delivery.
- 2.3 You waive any claims regarding any shortages in any goods delivered unless notice of such is provided to us within those 7 days.
- 2.4 Goods which are:
- expressly sold on a no-returns basis,
 - custom made,
 - not in the condition we supplied them,
 - used or damaged after delivery, or
 - returned by someone other than you as the original buyer
- will not be returnable unless we otherwise agree in writing, which we may refuse to do in our absolute discretion and on terms satisfactory to us including them being sent to us in the same condition we supplied them and at your expense. They otherwise remain at your risk as set out in **clause 5**.

3. Delivery and storage

- 3.1 Any dates specified by us for provision of goods or services are approximate only. If no dates are specified, delivery will be within a reasonable time.
- 3.2 We may provide the goods or services in instalments. Where goods or services are ordered by you in instalments, each instalment is a separate order and a separate contract performed by us upon delivery.
- 3.3 If you fail to take delivery of any of goods or services, without prejudice to any other rights we may have, we may arrange a further delivery or store or arrange for the storage of the goods however, delivery is deemed to have taken place at the time of the first attempted delivery. Any costs or expenses incurred by us in relation to re-delivery or storage, including any insurance, of the goods pending delivery are payable by you on the indemnity basis.
- 3.4 Where materials that have been supplied by you (or someone on your behalf) have not been used by us in relation to your orders within 28 days of delivery to our premises (or as otherwise may be agreed in writing), we may charge a storage fee \$5.00 plus GST per week for each week or part week that storage is required. Where such goods are not used within 3 months of delivery to our premises, you forfeit those goods to us and you authorise us to use or dispose of those goods as we see fit and the costs of such disposal will be payable by you on demand. We will endeavour to contact you to arrange for you to collect and deal with those goods before we use or dispose of them however, we are not obligated to do so.
- 3.5 We endeavour to keep delivery dates however, where a delivery is delayed for any reason whatsoever, you will not be entitled to cancel, rescind or terminate our arrangements.

4. Price, payment and interest

- 4.1 Prices stated on quotes are valid for the period in which the quote is valid. If you require any changes which affect the cost of providing the goods or services or their quantity, the price will change accordingly.
- 4.2 Unless otherwise agreed in writing, all amounts and prices are exclusive of any taxes, duties or levies (such as GST) and the relevant tax, duty or levy will be charged to, and is payable by, you.
- 4.3 All invoices must be paid in full strictly within 7 days of issue.
- 4.4 If an invoice is not paid in full by its due date in cleared funds, we may charge interest on the balance due at the rate of 10% per annum.
- 4.5 Where payment of any amount is made by a credit card, a surcharge of 1.0% of the invoiced amount including GST will be levied on the payment and you agree to that amount being deducted from your credit card account when payment is made.
- 4.6 Any dishonour fees incurred by us as a result of a cheque provided by you not being met on presentation will be payable by you.

5. Risk, title and insurance

- 5.1 Risk of damage to or loss of the goods passes to you immediately upon the date and time of dispatch from us and remains at your risk at all times, including where we are storing them for you.
- 5.2 Where items that have been supplied by you (or someone on your behalf) are delivered to our premises for use by us in the production process, we cannot and do not accept any liability for damage to or loss of those items. You agree to effect and maintain during the term of this agreement or the period for

which those items will remain at our premises (whichever is the longer) a policy of insurance to cover loss of and damage to those items.

- 5.3 We reserve the following rights in relation to all goods provided until all amounts owing by you in respect of those goods are paid in full:
- ownership of the goods and any items or materials you have had delivered to our premises;
 - to enter into any premises where the goods are or are reasonably suspected by us to be located, whether owned or occupied by you or any receiver, receiver and manager, liquidator, administrator or trustee in bankruptcy, without liability for trespass or any resulting damage to retake possession of the goods;
 - to keep or resell any of the goods, items or materials so repossessed without notice to you (and in respect of any such sale, you irrevocably licence to us the right to sell in any jurisdiction such goods bearing any trademark or name owned by or licensed to you); and
 - until payment for the goods and any costs as referred to in **clause 6** are received by us in full and in cleared funds, you hold the goods as bailee for us, must keep the goods separate from other goods and label the goods (or not remove labels) so that they are identifiable as our goods.
- 5.4 In respect of any resale pursuant to **clause 5.2**, we will apply the net proceeds of sale (after payment of all costs and expenses of such resale) firstly towards the payment of any interest under **clause 4.4**, then any costs stated in **clause 6**, then towards the unpaid invoice, then towards any other of our unpaid invoices and, if there is any surplus, the surplus will be paid to you. If there is a deficiency, we may recover the deficiency from you as a liquidated debt.
- ## 6. Security for payment and PPSR registration
- 6.1 If any invoice is not paid in full within 30 days of issue without our express written consent (which we may withhold in our absolute discretion), then without limiting any other rights and remedies which we may have, you charge in our favour any real or personal property in which you have an interest with payment of any outstanding invoice and any costs as referred to in this **clause 6** and you irrevocably authorise us to lodge caveats or other documents or notices to notify and protect that charge in relation to any real and personal property in which you have an interest.
- 6.2 All costs and disbursements incurred by us in recovering payment or in protecting or enforcing our rights under this document, including without limitation, the costs referred to in **clauses 5** and **6** and any legal costs and disbursements are payable by you on the indemnity basis.
- 6.3 All goods supplied will be subject to a purchase money security interest as that term is defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) which is a continuing and subsisting security with priority over a registered general security and any unsecured creditors and you grant us a security interest in the goods, any proceeds arising from the sale of the goods to secure your obligations to make payments to us as stated in this document.
- 6.4 If, pursuant to the PPSA, we take all or any of the goods in partial satisfaction of your obligations to us, you will remain liable to us for the difference between the market value of the goods at the time they are sold by us free from all rights and interests of you and other persons and the total of the amounts of your obligations to us.
- 6.5 You must not create or allow another purchase money or other security interest in the goods or encourage or allow any other entity to register a financing statement in respect of the goods without our express written consent (which we may withhold in our discretion) and you must notify us as soon as you are aware of any other person taking steps to register any interest in the goods.
- 6.6 You agree that, to the maximum extent possible:
- you forever waive your rights under sections 95, 118, 121(4), 129, 130, 132(2), 132(4), 157(1) and 157(3) the PPSA and any rights to receive notices before a secured party or receiver exercises a right, power or remedy;
 - sections 142 and 143 of the PPSA are excluded;
 - we need not comply with sections 132 and 137(3) of the PPSA
 - if the PPSA is amended after the date of our agreement including the terms and conditions stated in this document commences, to permit either party to agree to not comply with or to exclude other provisions of the PPSA, we may notify you that any of these provisions are excluded or that we need not comply with any of these provisions;
 - you will not exercise any right to make any request of us under section 275 of the PPSA, to authorise the disclosure of any information or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 6.7 Where you apply for a credit account or seek the supply of goods on credit, it may be that we require a guarantee or guarantees to be entered into by a third person or other entity to further secure your obligations to us.
- ## 7. Termination
- 7.1 We may terminate any order at any time without cause in our absolute discretion however, you may only terminate an order with our consent and on terms satisfactory to us such as indemnifying us from all costs and losses in respect of the order sought to be cancelled and paying such amounts within 7 days of the cancellation.
- 7.2 Subject to this document, on termination, that part of the price paid (if paid in advance or as a deposit) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and losses associated with that order and any other amounts that may be due and payable by you to us under the terms and conditions in this document or otherwise.
- ## 8. Release and indemnity
- 8.1 Any advice, recommendation, information, assistance or service given by us in relation to goods sold or manufactured by us or their use or application or in relation to the services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty as to accuracy, appropriateness or reliability and we do not accept any liability or responsibility for any loss, cost damage, liability or expense suffered from reliance on such advice, recommendation, information, assistance or service. You agree to rely on your own judgment in making decisions concerning this document, the goods and the services and their fitness for your use.

- 8.2 You must take all reasonable steps when using the goods to protect your own interests, including ensuring any direction or instruction you give to us in relation to production or any product you provide to us for use (or that you instruct us to use) in production is suitable for its intended purpose and managing all safety risks associated with the use of the goods noting the inherent risk of fire associated with lit candles.
- 8.3 To the maximum extent possible, you have no right of action against us and you release and indemnify us from any loss, cost, damage, liability or expense, including indirect, consequential and special losses (including loss of use, enjoyment, reputation, income or profit), and against all actions, suits, claims and demands you or any third party may have against us in relation to the goods and/or services or their use or in relation to any failure to deliver or delay in delivery of any goods or services or part thereof.
- 8.4 You acknowledge and agree that no such loss, cost, damage, liability or expense is reasonably foreseeable other than those stated/limited in **clause 10**.

9. Warranties

- 9.1 Any warranty or condition which would otherwise be implied in any agreement between us or in this document (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise of the goods or services) is expressly denied and is excluded to the maximum extent permitted by law. Where you give us any direction or instruction in relation to production or where you provide any product for us to use (or that you instruct us to use) in production, you warrant that the direction and/or product (as the case may be) is suitable for its intended purpose and that you will not seek to recover any loss or damage that may be caused by such direction or product.
- 9.2 To the maximum extent permitted by law, we do not warrant or guarantee the quality or workmanship or fitness for purpose of any goods.
- 9.3 Our goods come with guarantees that cannot be excluded under the *Australian Consumer Law*. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Any warranties provided in relation to goods are those of the manufacturer.

10. Liability limited

To the maximum extent permitted by law and notwithstanding **clauses 5.2, 8 and 9**, our liability to you in respect of any loss, cost, damage, liability or expense is limited (even where caused or contributed to by our negligence or breach of any term, condition or warranty stated in this document) in our absolute discretion to:

- repairing the goods;
- replacing the goods or supplying equivalent goods;
- refunding the purchase price paid;
- payment of the costs of repairing, replacing or acquiring equivalent goods;
- resupplying the services or equivalent services; or
- payment of the costs of resupplying the services or equivalent services.

You agree that we have no liability to you in relation to any defect or issue in relation to the Goods that is caused by or contributed to by any direction or instruction you give to us in relation to production or any product you provide to us for use (or that you instruct us to use) in production.

11. Force majeure

Each of us will be released from our respective obligations (except your obligations as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of either of us, including without limitation strike, riot, lockout, trade dispute, rebellion, fire, acts of God, shortages in raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems for a period of 7 days or more renders provision of the goods or services the subject of an accepted order/quote or purchase order impossible.

12. General

Privacy

- 12.1 To the maximum extent permissible by law, you waive all rights under the *Privacy Act 1988* (Cth) and consent to the collection, storage and provision of information by us to third parties. Such information may be used for such things as our supplying the goods or services to you, improving our goods and services or for our own statistical or marketing purposes. You consent to us using any personal or other information we hold for the purposes of investigating your creditworthiness, including conducting a credit check.
- 12.2 If an invoice remains outstanding in excess of 45 days without our express consent, you irrevocably authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.

Notices

- 12.3 All notices required or permitted to be given must be in writing and by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time. You must immediately notify us of any change in your name, address or other contact details or any change in your ownership or control. In the absence of such notification, the address and any contact information we hold in our records is deemed to be your relevant address or way to contact or send notices to you for all purposes.

Waiver and exercise of rights

- 12.4 A failure of a party to enforce a right, make an election or exercise a discretion promptly or at all will not operate as a waiver or postponement of any right power or remedy which it may have pursuant to this document.
- 12.5 A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.
- 12.6 A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right

Independent advice

- 12.7 You acknowledge that you have obtained, or have had adequate opportunity to obtain, independent legal advice as to the meaning and effect of this document before its terms were accepted by you.

Entire agreement

- 12.8 This document contains the entire agreement between us in relation to the supply of goods or services by us to you. Any previous representations or communications between us and any negotiations in relation to this document are merged in and superseded by this document and are of no force or effect. This document may only be varied or replaced by a document in writing signed by all parties.

Delegation/assignment

- 12.9 We may delegate or sub-contract the performance of any obligation or assign the benefit of the agreement constituted by this document in our absolute discretion. You may not however assign such benefits or obligations without our consent, which we may withhold in our absolute discretion.

Severance

- 12.10 If a provision in this document is void, illegal or unenforceable, it must be varied to give effect to the intention of this document or severed without affecting the enforceability of the other provisions.

Further assurances

- 12.11 Each party shall promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

Governing law and jurisdiction

- 12.12 This agreement and the transactions contemplated by it are governed by the law of New South Wales, Australia and the parties irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from them.

13. Acceptance

By signing below or in submitting a purchase order as set out in **clause 1.2**, the person signing below or otherwise to whom this document was sent warrants that they have authority to enter into this agreement (both personally and as the duly authorised agent for the entity to whom the quote is addressed or from whom a purchase order is received) and to accept the terms and conditions in this document on their behalves.

Signature: _____

Name: _____

Address: _____

Position: _____

Date: _____