

## TERMS AND CONDITIONS OF SALE

All Orders given to Australian Graphic Supplies Pty Ltd (hereafter AGS), ABN No 81 082 517 691 are subject to the following Terms and Conditions.

### 1. Definitions and Interpretations

1.1 In these Terms and Conditions:

"Delivery Address" means the delivery address of the Customer stated in an Order; "Contract" means the contract resulting from the acceptance by AGS of an Order in accordance with clause 2.3;

"Credit Application Form" means AGS credit application form by which a Customer can apply for credit account with AGS in respect of the sale of Goods;

"Customer" means any person who enters into a Contract with AGS for the sale and purchase of Goods;

"Delivery Time" means the time of delivery of the Goods either to the Delivery Address of the Customer or to the carrier of the Customer;

"GST" means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Loss" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental;

"Order" means an order placed with AGS for the sale and delivery of Goods;

"Order Confirmation" means a written confirmation of the Order by AGS which may be in the form of an invoice provided to the Customer by facsimile transmission or email or delivered to the Customer upon delivery of the Goods;

"Price" means the price for the Goods specified in the Order Confirmation;

"Goods" means the goods supplied or to be supplied by AGS to the Customer from time to time pursuant to the Contract;

"Terms and Conditions" means these terms and conditions as amended from time to time by AGS

1.2 In these Terms and Conditions (including defined terms), unless the context otherwise requires:

(a) the singular includes the plural and vice versa and each gender includes each other gender;

(b) headings are included for convenience only and do not affect the interpretation of these Terms and Conditions.

### 2. Formation of Contract of Sale of Goods

2.1 These Terms and Conditions supersede all previous terms and conditions imposed by AGS and may only be varied in writing by AGS.

2.2 Each Order will constitute an offer by the Customer to acquire Goods from AGS upon and subject to the Terms and Conditions and to the exclusion of all other terms and conditions and notwithstanding any qualifications of the Terms and Conditions (including any terms and conditions contained in any purchase Order or other document of the Customer) unless expressly agreed by AGS in writing. Any price lists or quotations given by AGS to a Customer are an invitation to the Customer to place an Order only.

2.3 A contract will only be made between AGS and the Customer for the sale and purchase of Goods if and upon the acceptance of the Order by AGS by the provision to the Customer of an Order Confirmation.

2.4 An Order may only be made by the Customer to AGS;

(a) in writing, by facsimile transmission or by electronic data interchange;

(b) by telephone, if within 3 business days of the placement of the Order, it is confirmed by a means outlined in (a).

2.5 The Contract resulting from the provision of the Order Confirmation cannot be cancelled by the Customer without AGS' written consent and AGS may at its discretion impose a reasonable cancellation charge.

### 3. Payment Terms

3.1 The Customer agrees to pay to AGS the Price in full upon the delivery of the Goods, unless the Customer has completed and returned a Credit Application Form and AGS has agreed to extend credit to the Customer, in which case the Customer agrees to pay the Price in full on or before the expiry of 30 days from the date of delivery of the Goods or as otherwise agreed with AGS.

3.2 If the Price is not paid in full as and when due in accordance with clause 3.1, then AGS shall have the right to charge interest at a rate of 1.25% per month from the due date to the date that the account is paid in full and should the account be referred to a collection agency the Applicant shall pay a 15% collection fee plus legal costs on a solicitor/own client basis.

3.3 If AGS agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as terms and conditions of the Contract.

3.4 The Price is GST exclusive unless stated otherwise. The Customer must pay to AGS any GST which AGS is liable to pay in respect of supplies made by AGS under these Terms and Conditions, at the same time and in the same manner as first payment is made for the supply to which the payment relates.

3.5 Prices, fees and charges are subject to change without notice.

### Title and Risk

3.6 The Customer acknowledges and agrees that no title to the Goods shall pass to the Customer until the Price has been paid to AGS in full.

3.7 Risk of Loss or damage to the Goods will pass to the Customer at Delivery Time.

### 4. Delivery

4.1 The Delivery Time shall be a time or during a period agreed by AGS and the Customer.

4.2 AGS reserves the right to withdraw an Order Confirmation at any time before the Delivery Time and will not be liable for any Loss whatsoever arising from its failure to deliver any or all of the Goods.

4.3 Any term of the Contract relating to the quantity of Goods is not the essence of the Contract. AGS reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately and the Customer cannot reject Goods on the basis of partial delivery.

4.4 Where Goods remain in the possession of AGS after the Delivery Time (including where the Customer fails for whatever reason to take delivery of the Goods), AGS is entitled to charge the Customer for all Loss occasioned by the Customer not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.

4.5 Unless otherwise agreed by AGS, all Goods will be delivered to the Delivery Address.

4.6 The Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

#### **5. Inspection, Acceptance of Goods and Customers obligations**

5.1 The Customer must inspect the Goods within 2 business days of the Delivery Time and if no inspection is so made, is deemed to have accepted the Goods.

5.2 The Customer has no claim for shortages, defects or any Loss in respect of Goods apparent on inspection unless:

- (a) a complaint is made to AGS within 3 business days of the Delivery Time specifying the shortage or defect; and
- (b) AGS is, after receipt of the complaint, permitted to inspect the Goods and investigate the complaint.

5.3 If a complaint is not made to AGS in accordance with clause 5.2, the Goods delivered will be deemed to be in accordance with the Contract, and AGS will not be held liable for any future Losses regarding the use or application of the Goods, and the Customer is bound to pay for them accordingly.

5.4 AGS will only accept the return of Goods from the Customer where:

- (a) the Customer has complied with clause 5.2 and AGS is satisfied as to the claim by the Customer; and
- (b) the Goods are returned to AGS in the same condition as when first delivered to the Customer.

5.5 If the Customer does not return Goods using AGS's carrier, the Customer must bear the freight costs.

5.6 Where incorrect Goods are Ordered, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Customer's requirements, an incorrect account number is used, or an Order is duplicated, the Customer may after receiving written authority from AGS, return the Goods to AGS subject to the Goods being returned in the same condition as when first delivered to the Customer and subject to the Customer bearing the freight costs of the delivery and return of the Goods.

5.7 Where Goods are returned to AGS in accordance with the above provisions AGS must issue a credit note in respect of any amounts paid by the Customer in respect of those Goods.

#### **6. Liability**

6.1 Legislation such as the *Trade Practices Act 1974* (Cth) may imply into these Terms and Conditions warranties or conditions or impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions.

6.2 All other conditions, warranties, representations, liabilities, and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are excluded to the extent permitted by law.

6.3 In the event that AGS breaches its obligations referred to in clause 6.1, to the extent allowed by law, its liability is limited to any one or more of the following, at its election:-

- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the goods or acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

6.4 The total liability of AGS under these Terms and Conditions is, to the extent permitted by law, expressed in this clause 6 and AGS will under no circumstances be liable to the Customer for any Loss incurred by the Customer or any other party resulting directly or indirectly out of the supply by AGS to the Customer or out of any breach of AGS under these Terms and Conditions or out of the negligence of AGS.

6.5 Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by law where to do so would render these Terms and Conditions void.

#### **7. General**

7.1 These Terms and Conditions take effect, are governed by and will be construed in accordance with the laws of the State of Queensland, Australia.

7.2 These Terms and Conditions are subject to change without notice.

7.3 The parties agree that any action arising out of, or relating to these terms may only be brought by a court of competent jurisdiction in the State of Queensland, Australia.

7.4 If any of these terms and conditions are found by a court of competent jurisdiction to be invalid or unenforceable, it will be struck out and the remaining terms and conditions will remain in force.

7.5 If we do not act in relation to a breach by you of these terms and conditions, this does not waive AGS's right to act with respect to subsequent or similar breaches.

7.6 You may not assign or transfer any rights or benefits you may receive under these terms and conditions to any other person or entity without the prior written consent of AGS.