

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 that 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, or the price set out in any specific quotations by AGS for the supply of Goods at a particular price, which quotation shall be open for acceptance within the period stated in a quotation or if no period is stated, within 30 days after the date of a quotation;

“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’s 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 20th day of the month following the date of invoice or as otherwise agreed with AGS.

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- 3.1 (a)** Payment for the Customer's first Order shall be made in advance before shipment of Goods.
- 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. Notwithstanding any credit terms given to the Customer, AGS may decline to sell Goods on credit to the Customer at any time without notice to the Customer.
- 3.4** The Price is GST and freight /delivery charge 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** All financial institutions duty, stamp duty, Government charges, or direct costs of any kind associated with the operation of the customers account will be charged to the customer. Furthermore, the customer will be charged a fee of \$100 for each dishonored cheque.
- 3.6** Prices, fees and charges are subject to change without notice.

Title and Risk

- 3.7** 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.
- 3.8** Risk of Loss or damage to the Goods will pass to the Customer at the time of dispatch from AGS's warehouse. AGS shall not be responsible for any loss or damage of Goods in transit. Insurance for Goods in transit to the Customer will not be arranged by AGS. The Customer shall be responsible for the insurance of Goods in transit, which insurance shall take account of these conditions.
- 3.9** Until the Price has been paid in full (a) legal ownership of Goods shall remain with AGS (b) AGS may enter the Customer's premises (or any premises where the Goods are located) without notice and without liability for trespass or any resulting damage and may retake possession of Goods (c) AGS may keep or resell any repossessed Goods (d) if the Customer resells Goods without first having paid AGS for them, the Customer shall hold that part of the proceeds of the sale which represents the invoiced price of Goods in a separate identifiable account as the beneficial property of AGS and shall pay the amount to AGS on request (e) notwithstanding anything contained in sub clauses 3.9 (a)-(d), AGS shall be entitled to maintain its legal rights against the Customer for the Price of the Goods.

The Customer acknowledges and agrees that AGS may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the Personal Property Securities Act 2010 (PPSA) to receive notice of any verification of the registration.

If the Customer defaults in the performance of any obligation owed to the AGS under these Terms and Conditions or any other agreement with AGS to supply Goods to the Customer, AGS may enforce its security interest in any Goods by exercising all or any of its rights under these terms or the PPSA. To the maximum extent permitted by law, the Customer and AGS agree that the following provisions of the PPSA do not apply to the enforcement by AGS of its security interest in the Goods: sections 95,125, 130,135,142 and 143.

3.11 Security and Charge

Despite anything to the contrary contained herein of any other rights which the AGS may have howsoever:

- (a)** where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to AGS or AGS's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that AGS (or AGS's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

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- (b) Should AGS elect to proceed in any manner in accordance with this clause and/or its sub-clause, the Customer and/or Guarantor shall indemnify AGS from and against all AGS's costs and disbursements including legal costs on a solicitor and own client basis.

The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint AGS or the AGS's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause

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.
- 4.7** AGS may arrange for the storage and carriage of Goods by carriers, contractors or sub-contractors. Notwithstanding any specific instructions given by the Customer as to the mode of carriage of Goods, in the exercise of its absolute discretion AGS may have any Goods carried or forwarded by any method which it deems fit.
- 4.8** Unless otherwise agreed in writing by AGS from time to time, the cost of freight of Goods from the AGS warehouse shall be paid by the Customer.
- 4.9** Unless otherwise specified in a quotation, Goods shall be packed in AGS standard packing. The cost of any special packing and packing materials required by the Customer shall be at the Customer's expense.

5. Inspection, Acceptance of Goods and Customer's 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 shall not be under any obligation to accept Goods returned by the Customer. 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** 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.

5.6 Where Goods are returned to AGS in accordance with the above provisions AGS must issue a

Customer initials: _____

credit note in respect of any amounts paid by the Customer in respect of those Goods.

6. Liability

- 6.1** Legislation such as the *Competition and Consumer Act 2010* (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.
- 7.7** In reselling, maintaining or installing Goods, the Customer is not AGS's agent or the agent of the manufacturer of Goods.

Signature: _____

Name: _____

Date: _____

Please retain one copy and send signed copy to Australian Graphic Supplies, P.O. Box 1309, CAPALABA QLD 4157 or fax to 1300 132 688

Customer initials: _____