

TERMS AND CONDITIONS OF TRADE

1. APPLICATION OF THESE TERMS AND CONDITIONS

These terms and conditions ("Conditions") apply to all supplies made by the Supplier to the Purchaser. Where the Purchase Order purports to be made on or subject to terms and conditions other than these Conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier agrees otherwise in writing.

2. QUOTATIONS, PURCHASE ORDERS AND FORECASTS

Any quotation made by the Supplier is not an offer to sell and no Purchase Order given in pursuance of any quotation will bind the Supplier unless and until such Purchase Order is accepted by the Supplier in its absolute discretion. All quotations are subject to withdrawal or variation by the Supplier at any time prior to acceptance of a Purchase Order. If the Purchaser has provided the Supplier with a forecast of future requirements or has provided to or accepted from the supplier a specification of the Goods, the Purchaser acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) and/or specification(s) for the purpose of ordering materials and arranging its people and other resources so as to be able to meet those forecast and/or specified requirements. In the event that the Supplier deems any such forecast and/or specification to have been materially changed, the Supplier shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Supplier having relied on the earlier forecast and/or specification. Such invoice will be subject to the normal terms of payment applying to the Purchaser. The Supplier shall also be entitled to invoice the Purchaser for all finished Goods made to forecast and/or specification and not taken by the Purchaser within 1 month of production. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

3. TERMS OF PAYMENT

Terms of payment are cash with order unless COD or credit or the use of credit card has been approved by the Supplier. If credit is satisfactorily established, terms are strictly net 7 days from the date of invoice, unless otherwise agreed to by the Supplier in writing. Any credit limit determined by the Supplier, in its absolute discretion, and as varied from time to time by the Supplier, shall apply to all purchases of Goods from the Supplier. If payments are not made within the above terms the Supplier is entitled to calculate and charge interest at a rate of 15% per annum calculated daily.

4. DEFAULT

If the Purchaser defaults in payment, or an application is made to a court to wind up the Purchaser, or a receiver or administrator is appointed to manage the affairs of the Purchaser, or the Purchaser makes or proposes to make any arrangement with its creditors, then the Supplier may, without prejudice to any other remedy that may be available to the Supplier, at its option withhold further deliveries of Goods, terminate the Contract and may recover from the Purchaser, at a minimum, reasonable compensation for materials and/or Goods purchased and ordered and labour expended in complying with the Purchase Order.

5. DELIVERY AND RISK

While the Supplier will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not guarantee delivery on that date and is not liable for any Loss resulting from late or early delivery. Delivery of the Goods shall be effected when the Goods are delivered in the form and manner agreed by the Supplier. If no date for delivery has been specified, then the Goods shall be supplied to the Purchaser and the Purchaser shall receive the Goods as soon as practicable after the Purchase Order has been accepted by the Supplier and the Goods have been produced. Risk in the Goods passes to the Purchaser at the time of delivery. Delivery to the Purchaser is deemed to occur at the time of delivery to the Purchaser or its agent at the location agreed by the Supplier and is not affected by any subsequent return of the Goods by or as directed by the Purchaser to the Supplier or the Supplier's agent for storage, including storage for which a cost is levied by the Supplier.

6. PASSING OF PROPERTY

The Purchaser agrees that property in the Goods is retained by the Supplier until payment by the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must store the Goods so that they are identifiable as those supplied by the Supplier. If the Purchaser fails to pay by the due date any amount owing to the Supplier, the Supplier may (without prejudice to any of its other rights) recover and resell any of the Goods in which property has not passed to the Purchaser, and the Purchaser authorises the Supplier to enter onto the premises where the Goods are kept to take possession of the Goods for that purpose at any time. If the Purchaser sells or otherwise disposes of, or purports to sell or otherwise dispose of any of the Goods supplied by the Supplier in which property has not passed to the Purchaser, then the Purchaser does so as a fiduciary for the Supplier. The proceeds of such sale or disposal are the property of the Supplier to the extent of any money owed to it by the Purchaser. The Purchaser must account to the Supplier for that portion of the proceeds of sale or disposal.

7. CANCELLATIONS

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery, facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received by the Supplier, together with the Supplier's loss of profit resulting from the cancellation of the Purchase Order.

8. FORCE MAJEURE

Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these Conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, shortage of resources, or breakdown in machinery. During the continuance of such circumstance the obligations of the party affected, to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.

9. SUPPLIER'S LIABILITY

- (a) All representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in these Conditions are expressly excluded to the fullest extent permitted by law. The Purchaser acknowledges that neither the Supplier nor any person acting on the Supplier's behalf has made any representations or given any promise or undertaking in relation to the quality of the Goods, their fitness for purpose or their usage.
- (b) Nothing in these Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation (including the *Competition and Consumer Act 2010* (Cth)) into the Contract, if such exclusion, restriction or modification would be void or prohibited by the legislation.
- (c) To the extent that the Supplier breaches any condition or warranty implied into the Contract and which cannot be excluded, or breaches any condition or warranty expressly included in the Contract, then the Supplier's liability is limited to, and completely discharged by, at the Supplier's discretion:
 - (i) replacement of the Goods that are the subject of the breach, or supply of equivalent goods; or
 - (ii) payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (iii) repair of the Goods; or payment of the cost of having the Goods repaired; or in the case of services, to:
 - (i) supply of the services again; or

- (ii) payment of the cost of having the services supplied again.
- (d) Subject to (b) and (c) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any Loss caused by any act or omission of the Supplier, its employees or agents, and whether based in negligence or other tort, contract or otherwise.
- (e) In no event shall the Supplier be liable for indirect or consequential losses (including loss of production, profit, goodwill or reputation).

10. DESCRIPTION AND SPECIFICATIONS

- (a) Whilst every effort is made to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, concept drawing, design, specification sheets or other descriptive matter provided by or on behalf of the Supplier represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty.
- (b) The Purchaser warrants that any goods or other material, including any packaging or artwork produced, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Purchaser shall not infringe any Intellectual Property rights of a third party or breach any law. The Purchaser shall indemnify and keep indemnified the Supplier its servants and agents against any action, loss, cost, claim or damage that may be brought against or suffered by the Supplier its servants or agents as a result of a breach of that warranty.
- (c) The Supplier reserves the right to make any changes to designs, drawings or specifications and/or Goods ordered by the Purchaser, which are required to comply with or conform to any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Purchaser.
- (d) The Supplier does not warrant or guarantee that any Goods produced, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon any designs, drawings, specifications or other information or material will achieve any standard or performance or any capacity whatsoever.
- (e) The Supplier will not be liable for any defect in the Goods arising from any designs, drawings, specifications or other information or material supplied to the Supplier or accepted by the Purchaser. Where the Purchaser approves any artwork or proofs submitted by the Supplier, the Supplier will not be liable for any errors or inaccuracies subsequently discovered.
- (f) Any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or their use or application is given in good faith and is believed by the Supplier to be appropriate and reliable. Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Supplier.
- (g) In addition to any right of lien which the Supplier may be entitled to by law, the Supplier will have a general lien over any designs, drawings, specifications or templates supplied to the Supplier by or on behalf of the Purchaser which is in the Supplier's possession until all monies owing by the Purchaser to the Supplier on any account have been paid in full.

11. INTELLECTUAL PROPERTY

Subject to the remainder of this clause 11, all right, title and interest in and to any goods, materials or developments in which copyright or other Intellectual Property subsist, created by or on behalf of the Supplier, created jointly with the Purchaser, or otherwise supplied by the Supplier to the Purchaser, shall vest absolutely in and remain the sole property of the Supplier. The supply of Goods shall imply a licence to the Purchaser to use the same but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any such Intellectual Property without the prior written consent of the Supplier. The Supplier acknowledges that the Purchaser retains all right, title and interest in and to Intellectual Property of the Purchaser supplied to the Supplier under any Contract. The Purchaser grants the Supplier a perpetual, irrevocable, royalty free licence under such Intellectual Property for the purpose of making all supplies contemplated by any Contract. The Supplier makes no representation or warranty that the Goods supplied or the use of such Goods or items made from the Goods either alone or in conjunction with other goods will not infringe any Intellectual Property right. The Purchaser will notify the Supplier of any claim or suit involving the Purchaser in which such infringement is alleged and if the Supplier considers itself to be affected it will be entitled to control the defence of such infringement allegation.

12. ARTWORK, PRINTING

- (a) Without limiting clause 11, the Purchaser indemnifies the Supplier from and against all claims, demands, suits and costs to which the Supplier may become wholly or partially liable by reason of any artwork required to be done in accordance with the Purchaser's specifications involving an infringement or alleged infringement of any Intellectual Property and any Loss that results.
- (b) If the Purchaser supplies the Supplier with any artwork for use on or in conjunction with packaging supplied by the Supplier, then use or reproduction by the Supplier of that artwork is not to be construed as a warranty or representation that it complies with the relevant legislation (in Australia or elsewhere) in relation to labelling, and the Purchaser hereby indemnifies the Supplier in relation to any Loss arising as a result of the use or reproduction of such artwork.
- (c) The Purchaser is responsible for providing the correct Global Trade Item Number (GTIN) in writing to the Supplier where this is applicable. If the Purchaser supplies the copy/artwork for the GTIN symbol, then the Purchaser must ensure substantial compliance with the specifications for such symbols contained in the most recent edition of the applicable Industry Guidelines for the Numbering and Barcoding of Trade Items. The Supplier will exercise reasonable care in printing the GTIN symbol but does not guarantee the accuracy or scannability of these symbols. No GTIN symbol can be considered defective if it is commercially scannable or is in substantial compliance with GTIN specifications at the time of production. The Supplier's liability for production defects in GTIN symbols is limited to, at the Supplier's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at the Supplier's discretion.

13. DESIGNS, TEMPLATES

All designs, sketches, negatives, photographs, proofs, templates, patterns, stereotypes and engravings commissioned or made available by the Supplier in connection with the supply of any Goods shall remain the property of the Supplier notwithstanding that a charge may be made for their recovery, creation, use, maintenance and storage.

14. QUANTITY AND QUALITY TOLERANCES

- (a) Each Purchase Order must satisfy the minimum run-size requirements of the Supplier. The quantity of the Goods delivered by the Supplier under the Purchase Order can vary by up to 20% of the quantity specified by the Purchaser in the Purchase Order.
- (b) Where the Purchaser does not supply detailed colour specifications for printing, the Supplier shall develop colour specifications and print the product accordingly to the Purchaser's general instructions. The Purchaser shall then either attend the Supplier's premises to view the production outcome and approve the colour specifications developed or alternatively the Purchaser shall forward samples at the cost of the Purchaser for approval. In either case the Purchaser shall initial the samples approved. Subsequent production runs shall be based on the standards and specifications approved. Failure by the Purchaser to approve colour specifications will deny the Purchaser the right of objection in relation to the limits of colour variation developed by the Supplier for that production. Where the Purchaser has selected colour specifications for light, nominal and dark standards specifying the nominal colour reproduction and associated light and dark limits, the Purchaser will only have the right of objection to the nominal colours selected if such colours have been nominated using a colour system accepted by the Supplier.
- (c) Where the Purchaser supplies specifications to the Supplier, any Goods not varying in the specification stipulated by the Purchaser by more than the established industry tolerance shall be accepted by the Purchaser as complying with the Contract.

15. PRICE VARIATION

The price quoted by the Supplier is subject to variation at any time prior to the date of acceptance of the order upon written notice to the Purchaser. Without limitation, if the cost of wages, materials or transport to the Supplier increases after the date of any written quotation and/or price list and before delivery of the Goods or completion of the work specified in the Purchase Order, the Supplier may add a fair and reasonable amount to the price quoted to cover the increase and the Purchaser must pay the price as varied.

16. TAX AND DUTIES

The Purchaser is liable for all taxes (including GST), duties, levies and other government fees and charges in relation to the Goods. Unless specified otherwise, prices quoted do not include such taxes (including GST), duties, etc. Where a Contract includes a price stated to be inclusive of taxes, the Supplier may on 7 days notice in writing increase the price for all or any of the Goods to the extent required to pass through the impact on the Supplier of any new tax, duty or other government charge or scheme (including any carbon based tax or scheme) coming into effect after the date of the Contract in accordance with the impact that such new tax, duty, charge or scheme has on the Supplier's costs of producing and/or supplying the Goods.

17. **GOODS AND SERVICES TAX**

If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price. The parties agree that: (i) the parties must be registered persons within the meaning of the GST Law; (ii) the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and (iii) costs required to be reimbursed or indemnified exclude any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

18. **CLAIMS**

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, facsimile or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 7 days after delivery of the Goods. The Purchaser must supply a sample, if requested, and information to the extent the Supplier can identify the product and the date of production. The Supplier has the right at any time within 30 days after receipt of the claim to inspect the relevant Goods. If the Purchaser disposes of any of the Goods within the 30 day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

19. **INSURANCE**

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit or installation or in storage, including storage at the request of and/or paid for by the Purchaser, will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered. The Supplier is not obliged to give the Purchaser a notice referred to in Section 35 (3), *Sale of Goods Act 1923* (NSW) (or any equivalent legislation).

20. **TRANSPORT**

If the Purchaser requests delivery by means other than normally used by the Supplier, then the Purchaser must pay all additional costs associated with the means chosen. If, within four weeks after the Goods are available for dispatch, the Supplier is unable or finds it impractical to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable.

22. **CONTAINERS**

The Supplier retains the right of possession of any dividers, pallets or containers used for delivery of the Goods, and the Purchaser agrees to indemnify the Supplier in relation to the hire and replacement costs of any of these not returned in good order and condition to the Supplier within 28 days of delivery of the Goods, unless otherwise agreed in writing by the Supplier.

23. **PAYMENT BY LETTER OF CREDIT**

If the Purchaser is not resident in Australia or is not an Australian company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside Australia, prices quoted are "free on wharf", unless otherwise agreed in writing by the Supplier.

24. **PPS LAW**

- (a) In this clause **PPSA** means the *Personal Property Securities Act 2009* (Cth) and **Security Interest** means anything that is defined to be a "security interest" under the PPSA.
- (b) If the Supplier determines that a Contract (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA, the Purchaser agrees, at its own cost, to do anything (such as obtaining consents, signing and producing documents and supplying information) which the Supplier reasonably requires for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective; or
 - (ii) enabling the Supplier to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Supplier; or
 - (iii) enabling the Supplier to exercise rights in connection with the Security Interest.
- (c) The Purchaser agrees to pay or reimburse the reasonable costs of the Supplier in connection with any registration of, perfection of or giving of any notification in relation to a Security Interest, or exercise of its rights in connection with a Security Interest.
- (d) The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

25. **MISCELLANEOUS**

- (a) Any of these Conditions may be varied in writing at any time by the Supplier.
- (b) The Supplier may at any time set-off any amounts owed by it to the Purchaser against amounts owed by the Purchaser to the Supplier on any account whatsoever.
- (c) Failure by the Supplier to insist on strict performance of any of these Conditions shall not be deemed a waiver thereof. The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any other provision, or of any further breach of the same or any other provision of the Contract.
- (d) If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- (e) The Contract constitutes the entire agreement between the Purchaser and the Supplier and no modification is binding in relation to the Contract unless agreed to in writing by the Supplier.
- (f) Any dispute arising out of the Contract is governed by the laws of the State of New South Wales, Australia, and the Purchaser submits to the jurisdiction of and agrees to be bound by the courts of that State.
- (g) All costs and expenses incurred by the Supplier to remedy any breach by the Purchaser of these Conditions or any Contract shall be recoverable from the Purchaser in addition and without prejudice to the Supplier's right to damages for breach of these Conditions or any Contract.
- (h) The Purchaser will not divulge to any person any information provided by the Supplier in relation to the Contract without the prior written consent of the Supplier, except as required by law or for the purposes of obtaining professional legal, financial or taxation advice.
- (i) The following words have the following meanings in these Conditions, unless the context requires otherwise:

"Contract" means the agreement between the Purchaser and the Supplier for the supply of the Goods on these Conditions and includes the details of the Goods appearing on the Purchase Order; **"Conditions"** means the terms and conditions set out in this document; **"Goods"** means exhibition stands, display units, printed materials and all other goods and/or services ordered in the Purchase Order or supplied by the Supplier; **"GST"** has the same meaning as in the GST Law; **"GST Law"** means the *A New Tax System (Goods*

and Services Tax) Act 1999 (Cth); “**Intellectual Property**” means any patent, registered design, trade mark, copyright or any other industrial or intellectual property rights; “**Loss**” means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property; “**Purchase Order**” means a purchase order or alternative form of order or offer to purchase provided by the Purchaser to the Supplier; “**Purchaser**” means the person (including its successors, personal representatives and permitted assigns) who acquires the Goods from the Supplier, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several; and “**Supplier**” (or “**Exhibitionco**”) means Exhibitionco Pty Limited and its associated entities (as that term is defined by the *Corporations Act 2001* (Cth)) including, without limitation, the company identified in any invoice, and their respective shareholders, directors and officers.