

## PROMO AND PRINT CO TERMS AND CONDITIONS OF SUPPLY

### 1. Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by the Supplier to the Customer.

### 2. Definitions

In these T&Cs:

“Claim” means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

“Confidential Information” means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

“Contract” means a contract formed as a result of the acceptance of an Order by the Supplier;

“Control” has the meaning set out in the Corporations Act;

“Corporations Act” means the Corporations Act 2001 (Cth);

“Customer” means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

“delivery address” means the address for the delivery of the Goods and/or Services in a Contract;

“delivery date” means the date for the delivery of the Goods and/or Services in a Contract;

“Goods” means the goods to be supplied by the Supplier from time to time under these T&Cs and any Contract;

“GST” has the same meaning as given to that term under the GST Act.

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Force Majeure” means any event or circumstance beyond the control of the party affected by that event or circumstance or both (“Affected Party”) which could not reasonably have been foreseen at any time of entering into these T&Cs and which could not reasonably have been provided against, prevented or overcome by the party affected, including without limitation any: (a) act of God; (b) act of the public enemy, war (declared or undeclared) blockade, revolution, riot, insurrection, civil commotion, hostility; (c) lightning, fire, storm, flood, earthquake, inclement weather, perils of navigation; (d) quarantine restriction

or epidemic; (e) accident, explosion, breakage; or (f) strike, lockout, ban or limitation of work or other industrial disturbance, but does not include lack of, or inability to use funds, for any reason.

“Insolvency Event” means any of the following, or any analogous, events:

- (a) the Customer ceases, or threatens to cease, carrying on business;
- (b) the Customer is unable to pay the Customer’s debts as the debts fall due;
- (c) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer’s assets, operations or business;
- (d) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer’s creditors or any class of the Customer’s creditors; or
- (e) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer’s assets, operations or business;

“Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

“Liability” means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

“Order” means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

“Personnel” means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

“PPSA” means Personal Property Securities Act 2009 (Cth);

“Price” means the price of the Goods and/or Services as nominated by the Supplier from time to time;

“Proceeds” has the meaning given to the term in section 31 of the PPSA.

“Services” means the services in a Contract and any services associated with the Goods;

“Supplier” means Promo and Print Co Pty Ltd ACN 160 720 758; and

“T&Cs” means these Terms and Conditions of Supply.

### 3. Order for Goods / Services

- 3.1 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may

- withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.
- 3.2 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.
- 3.3 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs).
- 3.4 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.
- 3.5 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.
- 4. Price**
- 4.1 Unless otherwise agreed by the Supplier in writing:
- (a) the Price will be as set out in any approved sales order or, in the absence of any sales order, the Supplier's list price;
- (b) the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services; and
- (c) the Price is exclusive of any delivery charges and exclusive of GST.
- 4.2 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- 4.3 The Supplier may charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.
- 5. Delivery of Goods**
- 5.1 If the Supplier agrees to deliver Goods, the Supplier:
- (a) will charge delivery charges, redelivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;
- (b) will endeavour to deliver the Goods to the delivery address on the proposed delivery date, or if no delivery date is specified in any Contract, within any estimated delivery timeframes, but is not responsible for delays in delivery; and
- (c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the delivery address or on the delivery date or in accordance with any other delivery arrangements.
- (d) will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.
- 5.2 The Supplier may deliver Goods in separate instalments. The Supplier's inability or failure to deliver any particular items of Goods in a Contract will not entitle the Customer to cancel the Contract in its entirety and the Customer will remain liable in respect of the remainder of the Goods under the Contract.
- 5.3 The Customer will ensure a member of the Customer's Personnel will be at the delivery address on the delivery date to sign the delivery docket on the Customer's behalf. The Customer agrees that:
- (a) the Supplier's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the delivery address;
- (b) The Customer must provide safe access for delivery of Goods; and
- (c) The Supplier may refuse to deliver Goods, and return the Goods at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Goods or if there is not a member of the Customer's Personnel available to accept delivery and sign for the Goods.
- 5.4 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.
- 5.5 Where the Customer's Personnel are not available to accept delivery during normal working hours, the Customer will be liable to pay any reasonable costs of the Supplier for storage and redelivery of the Goods.
- 5.6 A certificate signed by a director or secretary of the Supplier in relation to delivery of the Goods will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 5.7 The Customer must inspect any Goods immediately on collection or delivery of the Goods. If the Customer has not brought any defects in the Goods to the attention of the Supplier within 14 days of delivery, the Customer shall be deemed to have accepted the Goods subject to those defects (other than any latent defects).
- 6. Product Variance**
- 6.1 All Customer designs and artwork must:
- (a) be provided by customer in .Jpeg and Hi Res formats such as .eps and .ai; and
- (b) be properly laid out and print ready.
- 6.2 The Supplier will take reasonable care to check designs and artwork for consistency and accuracy with the Customer's instructions, however:
- (a) ultimate responsibility for the designs and artwork files lies with the Customer after a proof has been sighted and signed;
- (b) no responsibility is taken for graphics, bleed and colours. All text must be converted to curves/outlines, transparencies and layers must be flattened, correctly sized with bleed and no low-resolution images RGB or Pantone colours.

- 6.3 The Customer acknowledges that minor variations of the finished supplied Goods from any proposal submitted by the Supplier are acceptable, including but not limited to variance in print position, which can vary by up to 2 cm in any direction from layouts provided by the Supplier due to inconsistencies in manufacturing.
- 6.4 The Customer acknowledges that the Supplier does not guarantee complete colour consistency with artworks and that the Customer may not raise any dispute relating to colour variance where colours are within a shade of the approved colour.
- 6.5 The Supplier will take due care with supplied items, however spoilage owing to human and/or machine or computer error can occur. The Customer acknowledges and agrees that a spoilage rate of 5% is within commercially acceptable bounds on indent (for bespoke garment services).
- 7. Risk**
- 7.1 If the Supplier agrees to deliver Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are delivered to the delivery address.
- 7.2 If the Customer agrees to collect the Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are placed on any vehicle or means of conveyance.
- 8. Title**
- 8.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
- 8.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
- be only a bailee of the Goods;
  - ensure the Goods are kept separate and identifiable from other goods;
  - not grant any charge over, or interest in, the Goods to any third party; and
  - hold the proceeds from any sale or disposal of the Goods on trust for the Supplier.
- 9. Credit and Personal Property Securities**
- 9.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts in accordance with those credit terms.
- 9.2 The Customer and Supplier agree that:
- The Supplier's interest in the Goods and New Goods is a purchase moneys security interest for the purpose of the PPSA;
  - The Supplier's interest in the Goods and New Goods extends to the Proceeds of the Goods and New Goods; and
- the subject matter referred to in section 275(1) of the PPSA is confidential; and
  - the Customer waives the right to receive a verification statement in relation to any such registration.
- 9.3 The Customer must do anything, including providing information which Supplier requires to enable Supplier to register and maintain its security interest.
- 9.4 The following provisions of the PPSA do not apply and, for the purposes of section 115 are "contracted out" of the Agreement, sections 95, 96, 121(4), 125, 130, 132(3) (d), 132(4), 135, 142 and 143.
- 9.5 The parties agree that Supplier has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) of the PPSA and in any other method permitted by law.
- 9.6 Upon delivery the Customer must store the Goods separately from property belonging to the Customer or any other person and in a manner which identifies them as the property of the Supplier.
- 9.7 If the Customer:
- makes, produces or manufactures a new object from the Goods whether finished or not;
  - mixes the Goods with other goods; or
  - allows the Goods to become part of other goods,
- (the "New Goods"), the Supplier's ownership interest of the Goods immediately becomes an interest in the New Goods in accordance with Part 3.4 of the PPSA.
- 9.8 If the Customer sells the Goods or the New Goods before it has paid in full for them, it acquires ownership of the Goods immediately before the sale and until the Supplier recovers any amounts owed to the Supplier in full:
- the Supplier's security interest attaches to the Proceeds;
  - the Customer holds the whole of the Proceeds on trust for the Supplier; and
  - where the Customer is not paid, the Customer must assign its claim for payment, in respect of the sale of the Goods or the New Goods, to the Supplier if the Supplier requests the Customer to do so
- 10. Force Majeure**
- The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control, including any event of Force Majeure, and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

## **11. Confidential Information and Intellectual Property**

- 11.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 11.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 11.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.
- 11.4 The Customer warrants that the Supplier's use of any artworks, designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

## **12. Excluded Warranties**

- 12.1 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.
- 12.2 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.
- 12.3 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act, except to the extent permitted by such Acts.

## **13. Liability**

- 13.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier.
- 13.2 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

## **14. Release and Indemnity**

The Customer releases and indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- (a) the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the delivery address or any other matters;
- (b) the Customer's breach of these T&Cs or any Contract;
- (c) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (d) the Supplier or any member of the Supplier's Personnel entering the delivery address;
- (e) any delay in the delivery of the Goods;
- (f) damage to the property of the Customer or any third party during any delivery of Goods;
- (g) any spillage, breakage or contamination of Goods during any transport or delivery;
- (h) the Goods and/or Services not being fit for any particular purpose;
- (i) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
- (j) the Customer or any member of the Customer's Personnel refusing to accept any delivery;
- (k) the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract; and
- (l) any proceedings, claims and demands in relation to any security interest granted under these T&Cs.

## **15. Termination**

15.1 The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
- (c) there is any change in the Control of the Customer; or
- (d) an Insolvency Event arises in relation to the Customer.

## **16. GST**

16.1 Any expression used in this clause and which is defined in the GST Act has the same meaning in this clause.

16.2 Unless otherwise expressly stated, all amounts stated to be payable by the Customer under these T&Cs are exclusive of GST. If GST is imposed on any supply made under or in accordance with these T&Cs, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

## 17. Miscellaneous

17.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these T&Cs or any Contract may only be amended with the Supplier's express written agreement and any waiver by the Supplier must be express and in writing;
- (c) the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- (d) no Contract will be a sale by sample;
- (e) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
- (f) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (g) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
- (h) the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;

- (i) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent; and
- (j) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

## 18. Interpretation

18.1 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements; and
- (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs.