

GENERAL TERMS AND CONDITIONS OF SALE – XYZ INNOVATION PTY LTD

1. Definitions

In these terms and conditions of sale (**Terms**):

- **XYZ** means XYZ Innovation Pty Ltd ACN 132 783 236 of 43 Highett Street, Richmond 3121;
- **Customised Goods** means any goods which have been custom cut, custom processed or specifically acquired by XYZ at Your request;
- **Equipment** means all pallets, stands and/or any other reusable packaging or display equipment provided to You by XYZ in the course of supplying You with the Goods and/or Services;
- **Goods** means the goods ordered by You from XYZ pursuant to an Order;
- **Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including but not limited to rights of any kind in inventions, discoveries and novel designs;
- **Order** means a purchase order for Goods and/or Services submitted by You to XYZ in accordance with clause 4;
- **Price** means the price for Goods or Services (as the case may be) as stated in the Order or as otherwise agreed in writing by XYZ;
- **Production Materials** means any materials or equipment other than the Goods, created or manufactured by XYZ for the purpose of producing / manufacturing the Goods and/or supplying the Services;
- **Services** means the services supplied by XYZ to You at Your request pursuant to an Order or incidental to the supply of Goods to You by XYZ;
- **You** and **your** means the person or entity that places an Order with XYZ for Goods and/or Services; and
- **Your Materials** means any materials supplied by You to XYZ for use in the production of any Goods.

2. General

Unless expressly altered or modified in writing by XYZ, the Terms apply and will be deemed incorporated in, and form part of, the acceptance by XYZ of Your Order and future orders placed by You from time to time and supersede and cancel all prior agreements and understandings between You and XYZ.

3. Quotations

- 3.1 All quotations provided by XYZ to You for the supply of Goods and/or Services are valid for 14 days from the date of the quotation or for such other period stated in the quotation.
- 3.2 Verbal quotations are subject to written confirmation by XYZ.

4. Orders

- 4.1 All Orders for the supply of Goods and/or Services must be placed by You in writing and are subject to review and acceptance by XYZ.
- 4.2 You acknowledge that by placing an Order with XYZ you will enter into a legally binding contract with XYZ subject to these Terms.
- 4.3 An Order will be binding on XYZ and You if:
 - (a) written acknowledgment and acceptance of the Order is forwarded by XYZ to You; or
 - (b) the Goods and/or Services the subject of the Order are delivered by XYZ to You, Your employees, contractors or agents in accordance with clauses 5.2, 5.3 or 5.4 below.
 - (c) XYZ has taken steps to procure the Production Materials or has taken steps to manufacture the Goods or provide the Services to You; or
 - (d) XYZ accepts payment from You in part or whole for the Goods and/or Services.
- 4.4 No Order may be cancelled or altered by You in any way without the prior written consent from XYZ, which consent may be withheld by XYZ in its absolute discretion or made conditional on the occurrence of a specified event, and You agree to indemnify XYZ against all losses and expenses associated with or arising out of any variation of an Order permitted by XYZ in accordance with this clause 4.4.
- 4.5 In the event that XYZ approves a cancellation in whole or in part of an Order, XYZ will be entitled to payment from for all Goods

produced, work carried out in producing such Goods, all Services rendered and any other costs incurred by XYZ in producing or rendering such Goods and/or Services (as applicable).

- 4.6 If XYZ agrees to make an alteration to the design, specifications or method of manufacture of the Goods after an Order has been placed with XYZ by You, XYZ will not have any obligation to make similar alterations to any Goods previously ordered by or delivered to You by XYZ.

5. Delivery, risk and title

- 5.1 Unless XYZ agrees otherwise in writing, Price is exclusive of freight, delivery, insurance, handling, storage and packaging and any other expenses relating to the Goods, which costs will be charged to and paid by You.
- 5.2 XYZ will deliver the Goods or make them available for collection at the location agreed between XYZ and You or, if there is no agreement, at the location determined by XYZ.
- 5.3 XYZ may arrange for delivery of Goods to Your premises at Your sole risk and expense. In the absence of specific written instruction from You, XYZ will select the carrier and contract with the carrier on Your behalf as XYZ in its absolute discretion considers reasonable.
- 5.4 XYZ will use reasonable endeavours to meet its delivery schedule however, delivery dates are estimates only and XYZ will not be liable for loss, damage or delay occasioned to You or Your customers arising from late or non-delivery. Delayed or non-delivery of Goods does not constitute grounds for cancellation of the Order.
- 5.5 XYZ reserves the right to make deliveries by installments and the Order will be applicable as to any such installment. Delay in delivery or other fault or defect in any installment will not relieve You of Your obligations to accept and pay for those deliveries remaining under the Order.
- 5.6 If You fail to collect or accept delivery of Goods (as the case may be) the risk in those Goods will pass to You from the time of that failure (as determined by XYZ). If this occurs, XYZ will be entitled to recover the Price and any delivery expenses as if the Goods had been delivered to You and, in addition to any other rights and remedies (including the right to re-sell the Goods), XYZ may arrange to store the Goods at Your expense.
- 5.7 Risk in Goods passes to You on delivery by XYZ unless You arrange delivery. In that case, risk passes to You when the Goods leave XYZ's premises in the manner agreed.
- 5.8 Until payment in full is made in respect of the Goods:
 - (a) title to the Goods will not pass to You;
 - (b) if the Goods have been delivered:
 - (i) You will hold the Goods as bailee for XYZ;
 - (ii) You must store the Goods separately and in such a manner that they are clearly identified as the property of XYZ; and
 - (iii) XYZ may enter Your premises and take possession of the Goods without liability in respect of the tort of trespass, negligence or payment of any compensation to You or anyone claiming through You.
- 5.9 You must pay to XYZ the proceeds of sale of any Goods for which XYZ has not received payment and You must hold those proceeds on trust for XYZ until paid to XYZ.

6. Invoicing and Payment

- 6.1 XYZ will invoice You for the Goods and/or Services at the Price, plus any costs of delivery or storage and applicable taxes (including GST).
- 6.2 You must pay XYZ's invoice within 30 days from the end of the month in which the invoice was rendered by either cash, cheque, bank cheque or electronic funds transfer (into the nominated account of XYZ).
- 6.3 XYZ may in its absolute discretion charge default interest on amounts owing by You, but not paid on or before the due date for payment at the rate of 2% higher than the rate prescribed for the time being by the *Penalty Interest Rates Act 1983* (Vic.).

6.4

7. Returns, Cancellations and Variations

- 7.1 XYZ will accept returns of faulty Goods as required by law. XYZ will not otherwise accept the return of Goods unless the return is approved in writing by XYZ's authorised representative and the Goods are returned by You to XYZ in their original condition.
- 7.2 You are not entitled to return to XYZ any Customised Goods unless XYZ is required by law to accept the return of the Customised Goods.

8. Your Materials

You agree that:

- 8.1 You acknowledge and agree that:
- (a) Your Materials must be of merchantable quality and fit for their intended purpose;
 - (b) if you provide Your Materials to XYZ, You do so at Your own risk;
 - (c) Your Materials, together with all parts produced, will remain Your property after receipt of payment from You to XYZ in accordance with clause 6.
- 8.2 If Your Materials are either faulty or not of merchantable quality and:
- (a) Your Materials damage the materials provided by XYZ to manufacture the Goods; and/or
 - (b) the Goods are defective as a result of Your faulty materials, You must:
 - (c) compensate XYZ for the damage caused to the materials provided by XYZ to manufacture the Goods; and
 - (d) pay XYZ for the costs incurred in any further work required to repair or remanufacture the Goods.
- 8.3 If Your Materials are either faulty or not of merchantable quality and the events listed in clauses 8.2(a) and/or 8.2(b) transpire, XYZ will not, to the extent permitted by law, be liable to You for damages or consequential loss including loss of profit on any account arising out of or in connection with the Goods produced pursuant to clause 8.2.

9. Equipment

You agree to:

- 9.1 within 14 days from receipt, to return to XYZ all Equipment at Your expense;
- 9.2 indemnify XYZ for the full replacement value of any Equipment which You fail, neglect and/or refuse to return to XYZ promptly within 14 days from receipt.

10. Production Materials

- 10.1 You acknowledge and agree that Production Materials may be destroyed at XYZ's discretion after the delivery of the Goods or the supply of the Services to You.
- 10.2 Any Production Materials created prior to and in the course of the production of the Goods and/or the provision of the Services will remain the sole property of XYZ but may be purchased by You on such terms as You and XYZ agree.
- 10.3 If any Production Materials are stored or maintained by XYZ at Your request, You will be liable to make additional payments to XYZ for this service.

11. Credit Limit

The grant of any credit facility or nomination of any credit limit by XYZ in Your favour is an indication only of XYZ's intention at that time. XYZ may vary or withdraw any credit facility at any time in its absolute discretion and without any liability to You.

12. Default

- 12.1 You will be in default of the Terms if:
- (a) You fail to pay when due any amount owing to XYZ;
 - (b) You breach any of these Terms;
 - (c) You cease to carry on business;
 - (d) You cease to be able to pay your debts as and when they become due;
 - (e) You take any steps to enter into an arrangement with Your creditors; or

- (f) any step is taken to appoint a receiver, liquidator, administrator or other like person over the whole or any part of Your assets or business.

12.2 If You are in default of the Terms, XYZ may do any or all of the following (in addition to any other rights XYZ may have):

- (a) require You to pay immediately all amounts invoiced but unpaid or to pay in advance or on delivery;
- (b) suspend or cease supplying Goods and/or Services to You;
- (c) enter Your premises and repossess Goods for which payment has not been made by You.

12.3 You must pay all legal costs, fees and any other expenses incurred by XYZ in collecting amounts owed to it by You pursuant to this clause 0.

13. Exclusion of liability

Subject to and without limiting the operation of the *Trade Practices Act 1974* (Cth) as amended from time to time, no warranty, term or condition will be implied against XYZ by statute, common law or otherwise. To the extent permitted by law:

- (a) no representation, condition, term or warranty will be binding upon XYZ unless it is written and signed by XYZ or a person authorised in writing by XYZ;
- (b) no contract between XYZ and You will be deemed to be a sale by sample;
- (c) if XYZ publishes material concerning its Goods, Services and/or prices, anything so published which is inconsistent with these Terms is, unless otherwise expressly stated, overridden by these Terms;
- (d) You will rely on Your own knowledge and expertise in selecting any Goods for a particular purpose and any advice or assistance given to You by or on behalf of XYZ will not be deemed to be given to You as an expert or adviser.

14. Extent of liability

The liability of XYZ to You will not in any case exceed the Price of the Goods for which liability arises, whether in contract or tort or otherwise. XYZ will not be liable to You for damages or consequential loss including loss of profit on any account whether arising from any breach of contract or tort or otherwise arising out of or in connection with these Terms and You release XYZ from any such liability.

15. General

15.1 XYZ may assign any of its rights or obligations under these Terms to any third party at any time by notice to You. You may not assign any of Your obligations under these Terms without the prior written consent of XYZ, which consent may be withheld in XYZ's absolute discretion.

15.2 You must notify XYZ in writing within 14 days of any change of ownership of You and must fully indemnify XYZ against any loss or damaged XYZ may suffer as a result of Your failure to notify XYZ of such change in accordance with this clause 15.2.

15.3 XYZ does not sell, grant, transfer or assign any Intellectual Property Rights to You in the course of performing its obligations under these Terms including any Intellectual Property Rights in the Goods, Services or the packaging of the Goods or Production Materials.

15.4 The invalidity or unenforceability of any part of these Terms does not affect the enforceability of any part or provisions of these Terms and the invalid or unenforceable part is severable.

15.5 These terms are governed by the laws of Victoria and XYZ and You unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria.