

Terms and Conditions of Quotation and Sale

1. DEFINITIONS

In these Terms:

- (a) "Company" means Duncan Packaging Pty. Ltd.
- (b) "Customer" means the customer named on the face of the quotation.
- (c) "Goods" means all work, services, products, materials, items and labour.
- (d) "Terms" means these terms and conditions of quotation and sale.
- (e) "Quotation" means a quote for Goods from the Company to the Customer which is subject to these Terms.

2. TERMS APPLY TO ALL CONTRACTS

These Terms apply to and form part of any contract arising from the Customer's acceptance of the Quotation and any contract arising from repeat or further orders for the same or similar Goods whether given orally or otherwise, subject to express and implied warranties under the *Competition and Consumer Act 2010*.

3. PRICE

Unless otherwise agreed in writing:

- (a) The Quotation is open for acceptance for thirty (30) days from the date of the Quotation. After that date, the Company reserves the right to vary the Quotation to account for changes in
 - (i) the cost of producing the Goods (including but not limited to changes in the price of the materials, taxes, labour rates, Government actions); and
 - (ii) the specifications; andor for any other cause beyond the Company's control.
- (b) The Quotation excludes Goods and Services Tax.
- (c) Costs for artwork, film, cutting formes, stereos, blocks, screens, plates and engravings may in the sole discretion of the Company be charged in addition to the price and these items remain at all times the property of the Company.

4. ACCEPTANCE

Acceptance of the Quotation or placing an order with the Company constitutes full acceptance of these Terms and the parties are bound by them. Any addition or variation to these Terms will form no part of the contract unless such addition or variation has been agreed by the Company (as evidenced in writing) prior to placement of the order.

5. QUALITY

- (a) The Company relies on the Customer for the quality and accuracy of any artwork provided to it by the Customer.
- (b) Prior to completing an order the Company will provide the Customer with a proof for Customer approval.
- (c) If the Customer requires any changes, it must notify the Company within two (2) business days of receipt of the proof. For the purposes of this clause 5(c) time is of the essence.
- (d) Failure to respond within two (2) business days is the Customer's tacit approval of the proof and the Customer will have no recourse to the Company for defects in the Goods.
- (e) The Company may, in its sole discretion, dispose of artwork, film, cutting formes, stereos, blocks, screens, plates and engravings if these items have not been used for a period of three (3) years.

6. QUANTITY

Every endeavour will be made to deliver the Goods in the quantity ordered, but owing to the difficulty of producing exact quantities, orders are subject to a margin of 10 per cent (10%) for overs or shortages. The Customer must pay for the exact quantity of the Goods delivered unless:

- (a) the parties agree otherwise in writing at the time the Customer places the order; or
- (b) the Company, in its sole discretion, elects not to charge the Customer for Goods provided in excess of the exact quantity ordered.

Any exercise of the Company's discretion under clause 6(b) does not operate as a general waiver of that discretion.

7. PAYMENT

- (a) Subject to paragraph 6(b), the cost of the Goods must be paid in full in accordance with the terms of the Quotation.
- (b) Where:
 - (i) The Company has approved an application for commercial credit from the Customer or has otherwise agreed in writing (and such approval or agreement has not been revoked or withdrawn), and
 - (ii) The cost of the Goods ordered by the Customer, plus the cost of those Goods previously ordered by the Customer for which payment is outstanding, does not exceed the credit limit approved for the Customer,Goods must be paid for on or before the end of the month following the month of invoice.
- (c) The Company may charge interest on outstanding overdue balances, at the interest rate prescribed for the time being by the *Penalty Interest Rates Act 1983 (Vic)*.
- (d) If the Company does not receive payment in full on or before the due date, the Customer will be liable for all costs incurred in recovery of the outstanding debt, including but not limited to debt collection agency fees and legal fees on a solicitor/own client basis.

8. DELIVERY

- (a) The Company will use its best endeavours to have the Goods available for delivery to the Customer at the place and time for delivery stated in the Quotation but no liability will attach to the Company if some or all of the Goods are not available within that period.
- (b) The Company reserves the right to vary the delivery date by written notice to the Customer prior to the requested delivery date where it is, in the Company's view, impractical to deliver or arrange for delivery of the Goods to the Customer on the requested date.
- (c) The Company reserves the right to supply the Goods by instalments.
- (d) Should the place and time for delivery stated in the Quotation necessitate additional cost to the Company (including but not limited to additional staff costs or increased overheads) the Customer may, in the sole discretion of the Company, be required to reimburse to the Company those costs in full.

9. RETENTION OF TITLE

- (a) Risk in the Goods passes to the Customer immediately upon delivery.
- (b) Property in the Goods does not pass to the Customer until all money (including money owing in respect of other transactions between the Company and the Customer) due and payable to the Company by the Customer has been fully paid.
- (c) If the Goods are supplied by the Company to the Customer without payment in full of all moneys payable in respect of the Goods, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;

- (ii) irrevocably appoints the Company its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of the Company with respect to the Goods under applicable law;
 - (iii) must be able, upon demand, to separate and identify as belonging to the Company Goods supplied by the Company from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Company may repossess the Goods if payment is not in accordance with clause 7 of these Terms; and
 - (vi) grants an irrevocable licence to the Company or its agent to enter the Customer's premises in order to recover possession of the Goods pursuant to this clause. The Customer indemnifies the Company in respect of any damage to property or personal injury which occurs as a result of the Company entering the Customer's premises.
- (d) Where Goods are supplied by the Company to the Customer without payment in full of all moneys payable in respect of the Goods and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (New Goods), the Customer agrees that ownership of the New Goods immediately passes to the Company. The Customer must hold the New Goods on trust for the Company until all sums owing to the Company whether under these Terms or any other contract have been paid and the Company may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Company.
- (e) For the avoidance of doubt, under clause 9(d), ownership of the New Goods passes to the Company at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding clause 9(c) the Customer may transfer, sell or dispose of the Goods, including the New Goods, to a third party in the ordinary course of business provided that:
- (i) where the Customer is paid by a third party in respect of the Goods including the New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Company - in a separate account - until all amounts owned by the Customer to the Company have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Company upon the Company giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Company as its attorney.
- (g) Where the Goods are supplied by the Company to the Customer without payment in full of all moneys payable in respect of the Goods the Customer acknowledges that the Company has a right to register and perfect a personal property security interest. If the personal property security laws change, the Customer acknowledges that the Company may vary these Terms.

10. CLAIMS

The Customer must make any claims within fourteen (14) days of receipt of the Goods and for the purposes of this clause 10, time is of the essence.

11. PALLETS

- (a) The Customer indemnifies the Company in respect of any loss arising from any pallet not being returned in good order and condition to the Company within twenty-eight (28) days after delivery of the Goods.

- (b) Pallets may be exchanged on a one-for-one basis at the depot of either the Customer or the Company. In the event a pallet is not available for exchange a deposit will be charged to the Customer's account and will be refunded upon return of the pallet(s) to an agreed location.

12. INTELLECTUAL PROPERTY

- (a) The Customer warrants that no patent, copyright, trademark, design or any other right or legislation is or will be infringed by reason of the Company producing the order and the Customer indemnifies the Company on a solicitor/own client basis against all losses, costs and expenses whatsoever incurred by the Company or arising from or in connection with any claim, action or proceeding by a third party in relation to the order.
- (b) The Customer acknowledges that all technical information, advice, know-how, drawings, designs and samples ("the information") submitted to the Customer by the Company are the confidential and proprietary property of the Company.
- (c) The Customer must keep the information secret and confidential and must not disclose it or any part of it to any party without the express authority of the Company or unless legally compelled to do so.
- (d) The Customer must not reproduce any part of the information or the Goods in any form without first obtaining the express written authority of the Company.
- (e) Unless otherwise notified to the Company by the Customer in writing, the Company may, in its sole discretion, use the Goods, proofs or samples (which may include the Customer's artwork) in the Company's promotional materials.

13. SIZES

Unless otherwise stated, sizes referred to on the quotation or invoices are internal measurements.

14. DISPUTES

In the event of a dispute about charges or costs, the Customer must pay the sum payable pursuant to a statement of account in full pending an investigation of the dispute. If relevant, the Company must refund any overpaid monies in full within seven (7) days of the dispute being resolved.

15. FORCE MAJEURE

Every effort will be made to carry out a contract but the due performance of it is subject to variation or cancellation in the event of an act of God, internal disturbance, war, strike, lock-out, fire, flood, riot, theft, force majeure or any other cause beyond the Company's control which creates an inability to procure materials or raw materials required to produce the Goods (except at increased prices). If a contract is cancelled due to any of the above the Customer remains liable to pay for work done to the date of cancellation.

16. EXPERIMENTAL ORDERS

The Company reserves the right to charge the Customer for preliminary work and/or any Goods produced in an experimental way at the Customer's request.

17. SEVERANCE

If any clause (or part of a clause) in these Terms is held by a Court of competent jurisdiction to be illegal, unenforceable or contrary to public policy then these Terms must be read as if such clause (or part of it) was not included leaving the remainder of the contract valid and enforceable.

18. EXCLUSIONS AND LIMITATION OF LIABILITY

- (a) The Customer expressly agrees that use of the Goods is at the Customer's risk. To the full extent allowed by law, the Company's liability for breach of any term implied into these Terms by any law is excluded.
- (b) All information, specifications and samples provided by the Company in relation to the Goods are approximations only and, subject to any guarantees under the *Australian Consumer Law*, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery or to make any claim in respect of them.
- (c) The Company gives no warranty in relation to the Goods provided or supplied. Under no circumstances is the Company or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods supplied to the Customer;
 - (ii) any delay in supply of the Goods; or
 - (iii) any failure to supply the Goods.
- (d) Any advice, recommendation, information, assistance or service given by the Company in relation to the Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Company does not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Company is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or otherwise arising out of the provision of the Goods whether based on these Terms, negligence, strict liability or otherwise, even if the Company has been advised of the possibility of damages.
- (f) Unless otherwise expressly stated, the Goods are not for personal, domestic or household purposes.
- (g) The *Australian Consumer Law* may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Company's liability (if any) arising from any breach of those guarantees is limited to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods.

19. INDEMNITY

The Customer indemnifies and keeps indemnified the Company, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Company or, for which the Company is liable, in connection with any loss arising from or incidental to the provision of Goods, any order or the subject matter of these Terms including, but not limited to any legal costs incurred by the Company in relation to meeting any claim or demand or any third party costs for which the Company is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.

20. OTHER MATTERS

- (a) These Terms are governed by the laws of the state of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.

- (b) These Terms and any quotes and written variations agreed to in writing by the Company represent the whole agreement between the parties relating to the subject matter of these Terms.
- (c) These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Company or any of its employees or agents relating to or in connection with the subject matter of these Terms.
- (e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (f) A notice or other communication required or permitted to be given by one party to another must be in writing and delivered personally, sent by pre-paid mail or sent by facsimile to the recipient. The notice or other communication is taken to have been given on the second business day after posting or, if sent by facsimile before 4 pm on at business day at the place of receipt, on the day it is sent and otherwise on the next business day.

I hereby acknowledge that I have read and understood the Company's Terms. I am an authorised signatory of the Customer and am authorised to sign this application on behalf of the Customer. I understand that by signing this document, the Customer and I are bound by these Terms as amended from time to time.

Customer to sign:

Signed on behalf of the Customer

Print name of Customer

Print name of signatory (if different)

Position/Job Title:

Company Representative to sign:

Signed on behalf of the Company

Date signed: ____/____/____