

## PROMOTIONAL CENTRE TERMS AND CONDITIONS

Terms and Conditions for Goods supplied by Promotional Centre Pty Ltd (ACN 158 696 569), its successors and assigns and any person acting on behalf of and with the authority of Promotional Centre Pty Ltd (ACN 158 696 569) (hereinafter referred to as "Promotional Centre").

### 1. Definitions

In these Terms and Conditions, the following definitions apply unless the context otherwise requires:

"*Artwork*" means the artwork supplied by the Customer to Promotional Centre in respect of the Goods.

"*Australian Consumer Law*" means Schedule 2 of the Competition and Consumer Act 2010.

"*Consumer*" means as set out in section 3 of the Australian Consumer Law.

"*Customer*" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one, then each of them jointly and severally.

"*Delivery*" means deliver of the Goods in accordance with clause 6 below.

"*Goods*" means all goods and/or services supplied by Promotional Centre to the Customer at the Customer's request from time to time.

"*GST*" has the same meaning given to it by the GST Act.

"*GST Act*" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended, varied or modified from time to time.

"*Intellectual Property*" means all registered and unregistered rights in respect of patents, copyright, designs, trademarks, trade secrets, know-how, confidential information and all other intellectual property.

"*Order*" means a request by the Customer to purchase Goods from Promotional Centre in accordance with these Terms and Conditions.

"*Price*" means the price payable for the Goods as agreed between Promotional Centre and the Customer in accordance with clause 3 below.

"*Terms and Conditions*" means these terms and conditions and any invoice, document or order expressly agreed to by Promotional Centre.

### 2. Terms and Conditions

2.1 Any instructions received by Promotional Centre from the Customer and/or the acceptance of Goods supplied by Promotional Centre shall constitute acceptance of the Terms and Conditions by the Customer.

2.2 Promotional Centre may amend the Terms and Conditions from time to time, provided that the amended Terms and Conditions will only apply to an Order placed after the date of amendment.

2.3 The Customer accepts that the supply of Goods for any Order is subject to availability and failure of Promotional Centre to supply the Goods shall not render Promotional Centre liable to the Customer.

### 3. Price

3.1 The Price shall be as set by Promotional Centre being either:

- 3.1.1 as indicated on invoices provided by Promotional Centre to the Customer in respect of Goods supplied;
- 3.1.2 Promotional Centre's current price at the date of Delivery according to Promotional Centre's current price list; or
- 3.1.3 Promotional Centre's quoted price if a quoted price has been given and has not expired or been withdrawn.

3.2 Promotional Centre reserves the right to withdraw any quoted price at any time.

3.3 The Price shall be subject to revision by Promotional Centre in the case of a variation to the Order.

### 4. Payment Terms

4.1 At Promotional Centre's discretion, full payment or a deposit may be required.

4.2 At Promotional Centre's discretion, payment may be required before Delivery.

4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms and if no time is stated then payment shall be due seven (7) days following the date of the invoice and all payments shall be made by the Customer without deduction or setoff of any kind.

4.4 Payment will be made by cheque, or bank cheque, or by credit card, or by direct credit, or by any other method as agreed between Promotional Centre and the Customer.

4.5 Credit card payments may attract a surcharge as determined by Promotional Centre.

## **5. GST and other taxes and duties**

4.1 Unless expressly stated otherwise, amounts specified in any invoice, document or order do not include GST and other taxes and duties and Promotional Centre may recover GST and other taxes and duties as an additional amount payable by the Customer.

## **6. Delivery of Goods**

6.1 Delivery of the Goods is taken to occur at the time that:

6.1.1 the Customer or the Customer's nominated carrier takes possession of the Goods at Promotional Centre's address; or

6.2.2 Promotional Centre or its nominated carrier delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 At Promotional Centre's sole discretion, the costs of delivery are:

6.2.1 included in the Price;

6.2.2 in addition to the Price; or

6.2.3 for the Customer's account.

6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. If the Customer is unable to take delivery of the Goods as arranged, then Promotional Centre shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.4 Promotional Centre may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Terms and Conditions.

6.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:

6.5.1 such discrepancy in quantity shall not exceed ten (10) percent; and

6.5.2 the Price shall be adjusted on a pro rata basis.

6.6 Any delivery date stated is an estimated delivery date only and the failure of Promotional Centre to deliver by that date shall not render Promotional Centre liable to the Customer nor entitle the Customer to cancel any order.

## **7. Title and Risk**

7.1 The Customer acknowledges that Promotional Centre retains both the legal and equitable title in the Goods until full payment has been received by Promotional Centre in respect of the said Goods.

7.2 Notwithstanding Clause 7.1 above, the Customer is not restricted from selling any of the Goods supplied to it by Promotional Centre. However, the Customer acknowledges that until full payment has been remitted to Promotional Centre:

7.2.1 any proceeds of sale of the Goods must be held by the Customer on trust for Promotional Centre;

7.2.2 the amount of the proceeds referred to in Clause 7.2.1 above are to be paid to Promotional Centre immediately when they are received or alternatively the amount of the proceeds are to be paid into a separate identifiable account by the Customer as trustee for Promotional Centre and paid to Promotional Centre upon request; and

7.2.3 it is under a continuing obligation to account to Promotional Centre for such proceeds.

7.3 Notwithstanding Clauses 7.1 and 7.2 above, until the Goods are fully paid for or sold, the Customer must:

7.3.1 properly store the Goods in an area that protects them from deterioration, destruction, loss or harm; and

7.3.2 store the Goods in such a way that clearly identifies them as the property of Promotional Centre.

7.4 Promotional Centre may enter the Customer's premises or the premises where the goods or products are stored at any time before the goods or products are sold and:

7.4.1 repossess the said Goods; and

7.4.2 keep or re-sell any of the Goods.

7.5 The Customer acknowledges that if Promotional Centre exercises any of its rights under clause 7.4 above, the Customer will not be entitled to bring a claim against Promotional Centre for trespass or any resulting damages and Promotional Centre will be completely indemnified by the Customer and will be able to rely on the whole of this clause as a bar to any such claims that may be brought against it by the Customer.

7.6 Clause 7.5 above also indemnifies Promotional Centre against any claims made by third parties who may have or had the Goods stored in their premises.

7.7 In addition to Clauses 7.5 and 7.6 above, Promotional Centre agrees that it will exercise reasonable care in removing the Goods from the Customer's or third party's premises to minimize the disruption to the Customer or third party's business.

7.8 The reservation of title and ownership in the unpaid goods or products remains effective regardless of whether the goods or products have changed from their supplied form or have been incorporated with other goods or products.

7.9 Notwithstanding anything to the contrary herein, the risk of loss or damage to the Goods passes to the Customer at the time of Delivery.

## **8. PPSA**

8.1 The retention of title arrangement described in clause 7 above constitutes the grant of a purchase money security interest by the Customer in favor of Promotional Centre in respect of all present and after acquired goods supplied to the Customer by Promotional Centre.

8.2 The Customer must immediately if requested by Promotional Centre sign any documents provide all necessary information and do anything else required by Promotional Centre to ensure that the Company's purchase money security interest is a perfected security interest.

8.3 The Customer will not enter into any security arrangement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until Promotional Centre has perfected its purchase money security interest.

8.4 For any goods supplied that are not goods that are used predominantly for personal, domestic or household purposes the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the *Personal Property Securities Act 2009*.

8.5 The Customer hereby waives any rights the Customer may otherwise have to:

8.5.1 receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135;

8.5.2 apply to a court for an order concerning the removal of an accession under s 97;

8.5.3 object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135;

8.5.4 receive a copy of a verification statement confirming registration of a financing statement or a financing change statement relating to any security interest Promotional Centre may have in goods supplied to the Customer from time to time.

## **9. Cancellation**

9.1 Promotional Centre may cancel any Order at any time before the Goods are delivered by giving written notice to the Customer and on giving such notice Promotional Centre shall repay to the Customer any money paid in respect of the Price. Promotional Centre shall not be liable for any loss or damage whatsoever arising from such cancellation.

9.2 The Customer cannot cancel an Order except with the consent of Promotional Centre.

9.3 Should Promotional Centre consent to the cancellation of an Order, then the Customer acknowledges that it:

9.3.1 forfeits any deposit paid to Promotional Centre; and

9.3.2 shall be liable to Promotional Centre for any loss incurred (whether direct or indirect and including, but not limited to, any loss of profits) arising from the cancellation.

9.4 Unless otherwise agreed by Promotional Centre, the minimum amount payable to Promotional Centre under clause 9.3 above shall be 25% of the Price in the case of goods held on hand by Promotional Centre and 100% of the Price in the case of all other goods.

## **10. Defects**

10.1 The Customer must notify Promotional Centre in writing of any alleged deficiencies, faults or defects in the Goods within two (2) days of Delivery.

10.1 The Goods will be deemed to be free from any deficiencies, faults or defects if the Customer does not notify Promotional Centre in accordance with clause 10.1 above.

## **11. Artwork**

11.1 The Customer warrants to Promotional Centre that:

- 11.1.1 it is the owner or licensee of the Intellectual Property used in the Artwork for the Goods and it has the right to use, publish, licence or otherwise deal with the Artwork;
- 11.1.2 the Artwork does not infringe the Intellectual Property or similar rights of a person or contravene any applicable laws; and
- 11.1.3 the Customer will indemnify Promotional Centre against any loss and in respect of any claim alleging that the Artwork or any other material supplied by Promotional Centre by the Customer infringes Intellectual Property or similar rights or contravenes any applicable law.

## **12. Intellectual Property**

12.1 Where Promotional Centre has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Promotional Centre, and shall only be used by the Customer at Promotional Centre's discretion.

12.2 The Customer hereby authorises Promotional Centre to utilise images of the Goods designed, drawn or written by Promotional Centre in advertising, marketing or competition material by Promotional Centre.

## **13. Limitation of Liability**

13.1 Where the Customer acquires the Goods as a Consumer, nothing in the Terms and Conditions should be interpreted as attempting to exclude, restrict or modify either the exercise by the Customer of rights or remedies in respect of the Consumer Guarantees or any other rights or remedies conferred by the Australian Consumer Law or the application of the Consumer Guarantees or any other provision of the Australian Consumer Law.

13.2 Unless expressly stated herein, all warranties in relation to the supply of Goods by Promotional Centre whether express or implied are excluded unless such warranties cannot at law be excluded.

13.3 If the Customer acquires the Goods as a Consumer and the Goods supplied are goods which are not of a kind ordinarily acquired for personal, domestic or household consumption, then Promotional Centre' liability to the Customer for any claim in respect of a breach or alleged breach by Promotional Centre of the Consumer Guarantees is limited, at Promotional Centre' option to:

- 13.3.1 the replacement of the Goods or the supply of equivalent goods;
- 13.3.2 the repair of the Goods;
- 13.3.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 13.3.4 the payment of the cost of having the Goods repaired.

13.4 If the Customer does not acquire the Goods as a Consumer, Promotional Centre's liability for any defect or damage in the goods is:

- 13.4.1 limited to the value of any express warranty provided to the Customer by Promotional Centre at Promotional Centre's sole discretion;
- 13.4.2 limited to any warranty to which Promotional Centre is entitled, if Promotional Centre did not manufacture the Goods;
- 13.4.3 otherwise negated absolutely.

13.5 Under no circumstances shall Promotional Centre be responsible to the Customer for any loss of profit, economic loss or consequential loss.

## **14. Default**

14.1 The Customer will be in default of the Terms and Conditions if:

- 14.1.1 payment is not received in the time specified in clause 4 above;
- 14.1.2 the Customer breaches any other part of the Terms of Conditions; or
- 14.1.3 in Promotional Centre's opinion the Customer will be unable to meet its obligations to Promotional Centre as and when they fall due.

14.2 If the Customer is in default pursuant to clause 14.1 above, Promotional Centre:

- 14.2.1 will be entitled to receive forthwith all monies to be paid by the Customer to Promotional Centre whether such monies would otherwise be due and payable or not;
- 14.2.2 will be released from complying with any outstanding obligations Promotional Centre may have under each contract held with the Customer or its associated entities;
- 14.2.2 will have no liability to the Customer arising out of any contract;
- 14.2.3 may repossess the Goods;
- 14.2.4 will be entitled to interest on any overdue amount from the date when payment becomes due until the date of payment at a rate of 4% per annum plus the rate for the time being fixed by section 2 of the *Penalty Interest Rates Act* 1983;
- 14.2.5 may recover damages from the Customer together with any other costs, charges or expenses incurred by Promotional Centre; and
- 14.2.6 may recover from the Customer all legal fees on a full indemnity basis and all other costs and out of pocket expenses which may be incurred by Promotional Centre in the enforcement of the Terms and Conditions whether suit is filed or not.

#### **15. Waiver**

The failure by Promotional Centre to enforce any provision of the Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect Promotional Centre's right to subsequently enforce that provision.

#### **16. Governing Law**

The Terms and Conditions shall be governed by and interpreted according to the laws in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts operating in Victoria.

#### **17. Severance**

In the event of any clause or clauses contained herein being void, voidable by any party, unenforceable or illegal the clause or clauses must be read down to the extent required to give the provision of legal effect and the Terms and Conditions shall otherwise remain in full force and effect.

#### **18. Force Majeure**

Promotional Centre shall not be liable for any delay in performing any of its obligations under the Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of Promotional Centre, and Promotional Centre shall be entitled to a reasonable extension of time for the performance of such obligations.