

TERMS AND CONDITIONS OF SALE FOR THE PROVISIONS OF GOODS OR SERVICES BY MEGARA

Interpretation

1. In these Terms and Conditions of Sale:
 - 1.1 "Megara" means Megara (Australia) Pty Ltd (ACN 006 853 998).
 - 1.2 "the Customer" means the person, firm or company purchasing goods and/or services from Megara.
 - 1.3 "Goods" means the goods and/or services specified overleaf in the case of a quotation provided by Megara and/or the goods or services purchased or supplied by Megara pursuant to an Order.
 - 1.4 "GST" means A new Tax System (Goods and Services Tax Act) 1999.
 - 1.5 "The Conditions" means these Terms and Conditions of Sale.
 - 1.6 "Order" means the order placed by the Customer for the purchase of and/or supply of goods and/or services and includes the acceptance of any quotation provided by Megara.
 - 1.7 Nothing in The Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

Acceptance

2. The acceptance of any quotation provided by Megara by the Customer or the placement of any Order includes acceptance of The Conditions as the sole basis of the sale to the exclusion of any other conditions of sale including without limitation any terms and conditions contained in any Order. Modification of The Conditions shall not apply unless expressly confirmed in writing by Megara.

Prices

3.
 - 3.1 Unless previously withdrawn, Megara's quotations are open for acceptance within thirty (30) days. Megara reserves the right to refuse any Order based on a quotation provided by it within seven (7) days after receipt of the Order.
 - 3.2 Unless otherwise specified the prices quoted by Megara do not include sales tax, GST or other government impost and all such taxes and imposts will be to the Customer's account if applicable.
 - 3.3 In addition to the amount set out in any quotation given by Megara, or Order placed by the Customer, Megara may charge to the Customer:
 - (a) fees for any preliminary work performed at the Customer's request;
 - (b) fees for additional work required to be done as a result of the Customer changing his, her or its instructions;

- (c) fees for having to work from poor quality artwork or other material provided by the Customer, or as a result of reformatting or repagination arising from correction of the Customer's error;
- (d) fees and other charges for work required to be done urgently, including any overtime costs;
- (e) fees for handling or storing material or equipment supplied by the Customer for the purposes of the Order;
- (f) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the Customer;
- (g) freight costs and charges;
- (h) other charges, fees or disbursements referred to in The Conditions and not specified in this clause

For the purposes of this clause

- (a) "preliminary work" means all and any work performed by Megara at the Customer's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Megara at the time when Megara supplied a quotation or when the Customer provided the Order;
- (b) "additional work" includes all work undertaken by Megara as a consequence of the customer's variation, alteration or modification of its instructions in relation to the Order; and
- (c) "freight costs and charge" includes all costs and expenses incurred by Megara in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise.

- 3.4 Unless otherwise specified the prices quoted do not include delivery costs.
- 3.5 Unless otherwise agreed by Megara in writing the Customer shall make payment for the goods net in cash within the time specified in any quotation provided by Megara and where no time is specified or agreed net 30 day of delivery of the Goods
- 3.6 Notwithstanding contained in Clause 3.5 Megara may require payment in advance of delivery.
- 3.7 The failure by the Customer to make payment as required by The Conditions shall entitle Megara to treat such failure as a repudiation of the whole contract with the Customer and to recover damages for breach of contract. Megara reserves the right to suspend or defer without penalty delivery of any Goods ordered or any other contract entered into with the Customer for so long as any amounts remain overdue for payment by the Customer to Megara.
- 3.8 If Megara is not paid for any Goods on the due date then without prejudice to any other right or remedy all outstanding monies shall, from the date they fall due until payment, carry interest on the daily balance until paid at a rate of

interest 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 computed upon the money overdue during the period of default.

- 3.9 The Customer acknowledges that whilst Megara will make every endeavour to produce the exact number of Goods in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% under the number specified in the Order ("a discrepancy"). Where a discrepancy occurs Megara may adjust the amount charged to the Customer for the Order by a pro rata amount to reflect the actual number of items produced.

Rights in Relation to Goods

4. 4.1 Legal ownership to the Goods shall not pass to the Customer in relation to the Goods until all accounts owed by the Customer to Megara (whether in respect of the Goods or otherwise) are fully paid and the Customer agrees to:
- 4.1.1 store Goods which have not been paid for separately;
- 4.1.2 keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, bank the proceeds of such sale into a separate account and immediately remit such funds to Megara and;
- 4.1.3 if any Goods are used in a manufacturing process or mixed with other material, the Customer shall record the value of the Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to Megara.
- 4.2 Until all accounts owed by the Customer to Megara are fully paid (whether in respect of the Goods or otherwise) the Customer agrees that Megara shall be entitled to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for a trespass or any resulting damage and retake possession of the Goods and to keep or resell any Goods so repossessed.
- 4.3 Notwithstanding the provisions above Megara shall be entitled to maintain an action against the Customer for the amount due for the Goods and risk of the Goods shall pass to the Customer upon collection of the Goods by the Customer.
- 4.4 Megara shall, in respect of all sums owed by the Customer to it hereunder, have a general lien on all property of the Customer in Megara's possession and may, after 14 days' notice to the Customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the Customer's property held by Megara as aforesaid enjoys copyright protection in favour of the Customer, the Customer hereby grants to Megara a licence to exercise the rights conferred on Megara under this clause.

Delivery

5. 5.1 Unless otherwise specified in writing the Customer shall bear all delivery charges and shall bear all risk associated with delivery and collection of Goods.

- 5.2 The delivery times made known by Megara to the Customer are estimates only and Megara shall not be liable for late delivery or non-delivery and under no circumstances shall Megara be liable for any loss, damage or delay occasioned to the Customer or the Customer's customers arising from late or non-delivery.

Cancellation

6. No Order may be cancelled by the Customer except with consent in writing by Megara and on terms which will indemnify Megara against all losses to the date of cancellation.

Customer's Property

7. Any property of the Customer under Megara's custody or control shall be entirely at the Customer's risk as regards loss or damage caused to the property or by it.

Designs and Specifications to be Retained in Confidence

8. Any goods or work made or done according to Customer's design or specifications and any designs or specifications supplied by the Customer or copies thereof shall be held by Megara on the Customer's behalf and the Customer's disposal and shall not be disclosed or furnished to any other person, firm or government without the Customer's prior written consent and all reasonable precautions shall be taken by Megara to protect such confidentiality.
9. Unless Megara and Customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Megara in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) including without limitation any samples provided by Megara to the Customer prior to the placing of the Order are the property of Megara.

Copyright

10. (a) Copyright in all artistic and literary works authored by Megara shall be the property of Megara.
- (b) The Customer:
- (i) warrants that the Customer has copyright in or a licence to authorise Megara to reproduce, all artistic and literary works supplied by the Customer to Megara for the purposes of the Order and the Customer hereby expressly authorises Megara to reproduce all and any of such works for the purposes aforesaid;
- (ii) hereby indemnifies and agrees to keep indemnified Megara against all liability, losses or expenses incurred by Megara in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and
- (c) The Customer is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic works authorised by Megara for the purposes of

the Order however the exercise of such licence shall be conditional upon Megara having received all monies due to Megara under The Conditions.

Ideas

11. The Customer must keep confidential and not use any ideas communicated by Megara to the customer without Megara's written consent.

Electronic/magnetic media

12. All disks, tapes, compact disks or other media (other than media supplied by the Customer) used by Megara to store data for the purposes of completing the Order are the property of Megara. The Customer cannot require Megara to supply to the Customer any data so stored. In the event that Megara does not supply any data so stored or created Megara may charge for supplying such data to the Customer.

Megara will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Megara agrees to store such data, Megara may charge for doing so.

Performance

13. Any performance figures given by Megara are estimates only. Megara shall be under no liability for damages for failure to obtain such figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable to such figures.

Megara's liability

14. 14.1 Megara's liability for Goods manufactured by it is limited to making good any defects by repairing the same or at Megara's option by replacement, within a period not exceeding six calendar months after the Goods have been dispatched or collected provided that:
- 14.1.1 defects have arisen solely from faulty materials or workmanship;
 - 14.1.2 the Goods have not received maltreatment, inattention or interference;
 - 14.1.3 accessories of any kind used by the Customer are manufactured by or approved by Megara;
 - 14.1.4 the seals of any kind on the Goods remain unbroken; and
 - 14.1.5 the defective parts are promptly returned free of cost to Megara.
- 14.2 If Goods are not manufactured by Megara the guarantee of the manufacturer thereof shall be accepted by the Customer and is the only guarantee given to the Customer in respect of the goods.
- 14.3 Megara shall not be liable for and the Customer releases Megara from any claims in respect of faulty or defective design or any Goods supplied unless such design has been wholly prepared by Megara and the responsibility for any claim has been specifically accepted by Megara in writing and in any event Megara's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with paragraph 14.1 of the Conditions.

- 14.4 Except as provided therein, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, material or workmanship or otherwise are hereby expressly excluded and Megara shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of Megara's negligence or in any way whatsoever.
15. Megara's liability for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (other than s. 69) is hereby limited to:
- 15.1 in the case of goods, any one of more of the following:
- 15.1.1 the replacement of the goods or the supply of equivalent goods;
- 15.1.2 the repair of the goods;
- 15.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods;
- 15.1.4 the payment of the cost of having the goods repaired; or
- 15.2 in the case of services:
- 15.2.1 the supplying of the services again; or
- 15.2.2 the payment of the cost of having the services supplied again.
16. Megara's liability under s. 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the Customer an amount equal to:
- 16.1 the cost of replacing the goods;
- 16.2 the cost of obtaining equivalent goods; or
- 16.3 the cost of having the goods repaired, whichever is the lowest amount.
17. If Megara submits to the Customer a proof of the Goods Megara will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the Customer before the Order was completed.

Indemnification

18. The Customer agrees to indemnify and keep indemnified Megara in regard to any action, suit, demand or claim of whatsoever nature arising out of any infringement of the intellectual property rights of others arising directly or indirectly from the Order placed by the Customer with Megara or any of the information provided by the Customer to Megara.

Alterations etc

19. If, before any quotation is prepared by Megara, or any Order placed by the Customer, the Customer does not give Megara specific instructions in relation to product design, type or layout of any printing:

- (a) Megara may use any product design, type and layout which, in Megara's opinion, is appropriate; and
- (b) Megara may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the Customer subsequently altering the product design, type or layout used by Megara.

Outside work

20. If Megara has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Megara from a third party in order to carry out the Customer's instructions:
- (a) Megara will not be liable for any breach of The Conditions if that breach is a result of or is connected with the supply by the third party of such goods and/or services.
 - (b) Megara acquires such goods and/or services as agent for the Customer and not as principal and will have no liability to the Customer in relation to the supply of those goods and/or services. Any claim by the Customer in relation to the supply of those goods and/or services must be made directly against the third party.
 - (c) The Customer must pay for such goods and/or services.
 - (d) Property in any such goods obtained from a third party and incorporated into the Goods passes to Megara at the time of incorporation.

Material supplied by Customer

21. If Megara and the Customer agree that the Customer is responsible for supplying materials or equipment for the purposes of the Order:
- (a) The Customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Megara.
 - (b) Megara will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking.
 - (c) Megara will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Customer.
 - (d) Property in any materials supplied by the Customer and incorporated into the Goods passes to Megara at the time of incorporation.

Property left with Megara

22. If the Customer leaves property in Megara's possession without specific instructions as to what is to be done with it, Megara may, 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

Force Majeure

23. If Megara is prevented or restricted in its performance or observance of The Conditions or any of them or if such performance or observance is interfered with by reason of any causes beyond the reasonable control of Megara then Megara shall, upon it providing notice to the Customer of such cause, be excused from further performance or observance to the extent prevented by such cause or causes.

Jurisdiction

24. The Conditions and any contract between Megara and the Customer shall be governed by and construed in accordance with the laws of the State of Victoria.