

## Terms And Conditions

### 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 657 527 010).
- 1.2 "the Customer" means the person, firm or company purchasing Goods 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 includes the acceptance of any quotation provided by Megara.
- 1.7 "ACL" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic).
- 1.8 "Consumer" has the same meaning as in section 3 of the ACL.
- 1.9 "Consumer Guarantee" means a Consumer Guarantee applicable to The Conditions under the ACL, including, in the case of any supply of goods, any Express Warranty.
- 1.10 "Excluded Goods" means 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the ACL.
- 1.11 "Excluded Services" means 'services of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the ACL.
- 1.12 "Express Warranty" has the same meaning as in section 2(1) of the ACL.
- 1.13 "Fair or Reasonable" means 'fair or reasonable' for the purposes of section 64A of the ACL.
- 1.14 "Financing Charge Statement" as defined in the PPSA.
- 1.15 "Financing Statement" as defined in the PPSA.
- 1.16 "Loss" means any liability, loss, cost, expense or damage.
- 1.17 "PPSA" means the *Personal Properties Securities Act 2009* (Cth).
- 1.18 "Proceeds" as defined in the PPSA.
- 1.19 "Registration Commencement Time" as defined in the PPSA.
- 1.20 "Security Interests" as defined in the PPSA.
- 1.21 "Title Guarantee" means a guarantee pursuant to any of sections 51, 52 or 53 of the ACL.
- 1.22 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 ACL 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;

## Terms And Conditions

- (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 2% under or over 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***

## Terms And Conditions

- 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 The Customer acknowledges that it grants a Security Interest(s) and that the Conditions constitutes a Security Agreement for the purposes of the PPSA. The Customer acknowledges that Megara has a Security Interest in the Goods and any Proceeds from the Goods until title passes to the Customer in accordance with clause 4.1. The Customer acknowledges that each security interest over Goods (or their Proceeds) arising under this clause 4.1 is a "purchase money security interest" under the PPSA to the extent that it secures payment of the amounts owing in relation to those particular Goods. The Customer will do anything reasonably required by Megara to enable Megara to register the Security Interest, with the priority Megara requires, and to maintain the registration. The Security Interest arising under the Conditions attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any Security Interest arising under the Conditions attaches at any later time.
- 4.4 Pending payment, the Customer understands and agrees that Megara may file documents with any relevant government authority (including lodging a Financing Statement on the Personal Property Securities Register established under the PPSA) indicating that Megara is the owner or secured party in respect of the Goods in the Customer, and the Customer consents to such filings.
- 4.5 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.
- 4.6 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.
- 4.7 The Customer may, in the ordinary course of its business, use the Goods in, or subject the Goods to, any manufacturing, mixing or other value adding process ("Co-Mingled Goods") and/or sell and deliver any Goods or Co-Mingled Goods, as principal, to a third party and Megara will have (a) any rights provided for under Part 3.4 of the PPS Act; and (b) a right to any Proceeds of the Goods or Co-Mingled Goods.

### **Delivery**

- 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.

## Terms And Conditions

### **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**

## Terms And Conditions

- 14.1 If the Customer is a Consumer, the Customer acknowledges that Megara's goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure or compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 14.2 Subject to and to the extent permitted by the provisions of the ACL, 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:
- 14.2.1 defects have arisen solely from faulty materials or workmanship;
  - 14.2.2 the Goods have not received maltreatment, inattention or interference;
  - 14.2.3 accessories of any kind used by the Customer are manufactured by or approved by Megara;
  - 14.2.4 the seals of any kind on the Goods remain unbroken; and
  - 14.2.5 the defective parts are promptly returned free of cost to Megara to the address provided in The Conditions.
- If the Customer is a Consumer, the Customer's rights under this clause 14.2 are in addition to other rights and remedies of the Customer under a law in relation to the goods or services to which this clause 14.2 relates.
- 14.3 Subject to and to the extent permitted by the provisions of the ACL, 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.
- 14.4 Subject to and to the extent permitted by the provisions of the ACL, 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. 14.5 Except as provided in The Conditions and to the extent permitted by the ACL, any condition or warranty which would be implied by law as a term of this agreement is excluded.
- 14.6 Except where clauses 14, 15 or 16 apply, Megara is not liable for any Loss, however caused (including by the negligence of Megara), suffered or incurred by the Customer in connection with this agreement whether or not Megara was aware of the possibility of such Loss to the Customer when this agreement was entered into.
15. If the Customer is a Consumer clause 14.5 does not apply to any liability of Megara for failure to comply with a Consumer Guarantee, and Megara's liability for a breach of a Consumer Guarantee (other than ss 51, 52 or 53) is hereby limited to:
- 15.1 in the case of goods, subject to clause 15.3, unless the goods are Excluded Goods, Megara (at its election):
- 15.1.1 replacing the goods or supplying equivalent goods;
  - 15.1.2 repairing the goods;
  - 15.1.3 paying the cost of replacing the goods or of acquiring equivalent goods;
  - 15.1.4 paying the cost of having the goods repaired; or
- 15.2 in the case of services, subject to clause 15.3, unless the services are Excluded Services, Megara (at its election):
- 15.2.1 resupplying the services; or
  - 15.2.2 paying the cost of having the services supplied again.
- 15.3 Clauses 15.1 and 15.2 do not apply in relation to a Title Guarantee or if it is not Fair or Reasonable for the Supplier to rely on them.



## Terms And Conditions

16. Megara's liability under s 276A of the ACL 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. Subject to and to the extent permitted by the provisions of the ACL, 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) Subject to and to the extent permitted by the provisions of the ACL, 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.

### **Notice**

## Terms And Conditions

22. Megara does not need to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

### **Disclosure of information**

23. The Customer and Megara agree that neither party will disclose to an “interested person” (as defined in section 275(9) of the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPSA.

### **PPSA enforcement provisions**

24. All of the enforcement provisions of Chapter 4 of the PPSA apply to all of the Security Interests created under the Conditions, except as excluded by clause 25.

### **Excluded PPSA provisions**

25. The following provisions of the PPSA will not apply to the enforcement of the Security Interest(s) created under the Conditions

- (a) section 95 (notice of removal of accession), to the extent that it requires Megara to give a notice to the Customer;
- (b) section 121(4) (enforcement of liquid assets – notice to grantor);
- (c) section 130 (notice of disposal), to the extent that it requires Megara to give a notice to the Customer;
- (d) paragraph 132(3)(d) (contents of statement of account after disposal);
- (e) subsection 132(4) (statement of account if no disposal);
- (f) section 135 (notice of retention);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).

### **Property left with Megara**

26. 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**

27. 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**

28. 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

### **PPSA Provisions**

29. Provisions in the Conditions relating to the PPSA will be effective from the “Registration Commencement Time”, except clauses 23, 24 and 25 which are effective immediately.

### **No reliance**

30. Neither party has relied on any statement by the other party not expressly included in this agreement.

### **Entire agreement**

31. If the Customer is not a Consumer, this agreement states all the express terms of the agreement between the parties in respect of its subject matter. Except in relation to any Express Warranty, this agreement supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.