

BUDGET GROUP – TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES

The following terms and conditions of sale ("**Terms**") shall apply to and form part of any contract for the supply of goods ("**Goods**") or services ("**Services**") by Budget Packaging Supplies Pty Ltd (ACN 006 580 954) or Budget Tape Imports Pty Ltd (ACN 074 513 554) trading as Budget Group ("**Budget**") to a customer ("**Customer**").

1. QUOTES

- 1.1 No quote given by Budget to the Customer shall constitute an offer. Any order from the Customer to Budget for the supply of Goods or Services shall not bind Budget until accepted by Budget in writing.
- 1.2 Prices given in any quote by Budget are applicable to that quote only, shall not apply in any other instance and are valid for a period of 30 days from date of issue by Budget.

2. PURCHASE ORDERS

- 2.1 These Terms apply to the Customer and to Budget in respect of Goods or Services ordered by the Customer irrespective of how the order is placed and whether it was by email, fax, telephone, or via one of Budget's sales representatives. Any terms and conditions set out in the Customer's purchase order deviating from or inconsistent with these Terms shall not bind Budget despite any statement by the Customer in its order that its terms and conditions shall prevail over these Terms.
- 2.2 A contract shall only be or be deemed to have been entered into between Budget and the Customer for the supply of the Goods or Services when the Customer's purchase order has been accepted by Budget in writing ("**Sales Note**").

3. DELIVERY

- 3.1 This clause 3 applies to the delivery of Goods to the Customer from time to time.
- 3.2 Budget is entitled to charge a fee for any delivery.
- 3.3 Risk in the Goods passes at the point of delivery.
- 3.4 Budget is deemed to have delivered Goods when they are made available for unloading at the Customer's nominated delivery point.
- 3.5 The Customer is responsible for unloading Goods from Budget's delivery vehicle.
- 3.6 If Goods are to be collected by the Customer from Budget's place of business, delivery of Goods occurs when the Goods are made available to be loaded on the Customer's vehicle.
- 3.7 Budget shall be deemed to have delivered the Goods in accordance with these Terms even if the Customer fails to accept delivery.

4. PAYMENT

- 4.1 Except as otherwise agreed by Budget in writing, terms of payment are cash on order.
- 4.2 Any extension of credit to the Customer by Budget shall be at the sole discretion of Budget and, where extended, unless otherwise advised in writing by Budget, Budget requires payment in full within 30 days of the end of the month in which delivery occurs.
- 4.3 The Customer agrees that Budget may use the services of a credit reporting agency from time to time to obtain credit information concerning the Customer (and the Customer must procure the consent of its directors to obtain credit information about them) in order to assess credit worthiness and this authority continues until all supply has ceased

and all liabilities to Budget have been fully discharged.

- 4.4 Time specified for payment is of the essence.
5. **RETENTION OF TITLE AND PPSA**
- 5.1 Whilst the risk in the Goods passes on delivery, legal and equitable title remains with Budget until payment in full for all debts accrued or owed by the Customer to Budget is received by Budget.
- 5.2 Until Budget has received payment for the Goods in full:
 - (a) Budget reserves the right to enter the Customer's premises and retake possession of the Goods, reserves the right to keep or resell any Goods repossessed and reserves any other rights it may have at law or under the PPSA; and
 - (b) the Customer agrees to take the Goods as bailee for Budget and must insure the Goods against all usual risks to full replacement value until ownership passes to the Customer noting on such insurance policy the interest of Budget and any insurance monies received by the Customer in respect of Goods owned by Budget shall be received on trust for and paid to Budget.
- 5.3 Until Budget has received payment for the Goods in full, the Customer acknowledges that Budget shall have a Purchase Money Security Interest which attaches over such Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Budget.
- 5.4 For the avoidance of doubt, Budget may register its Purchase Money Security Interest on the Personal Property Securities Register established by the PPSA and, where reasonable, amend the registration.
- 5.5 The Customer acknowledges that it must sign a document incorporating these terms and if it does not sign such a document it shall be deemed to have accepted these Terms upon placing a purchase order irrespective of how the order is placed and whether it was by email, fax, telephone, or via one of Budget's sales representatives.
- 5.6 The Customer must not grant any other person a Security Interest in respect of the Goods or allow an Excluded Interest to exist over the Goods.
- 5.7 The Customer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which Budget asks and considers necessary for the purposes of:
 - (a) ensuring that a Security Interest created under these Terms is enforceable, perfected and otherwise effective; or
 - (b) enabling Budget to apply for any registration, or give any notification, in connection with a Security Interest created under these Terms so that the Security Interest has the priority required by Budget, including anything Budget reasonably asks the Customer to do in connection with the PPSA.
- 5.8 To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to receive notices or statements

- under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA, redeem the Goods under section 142 of the PPSA, reinstate these Terms under section 143 of the PPSA or receive a verification statement (as defined in the PPSA).
- 5.9 Despite these provisions Budget may maintain an action against the Customer for the purchase price of the Goods.
- 5.10 Without limiting the generality of Budget's rights in this clause 5, if payment for the Goods is not made by the Customer by the due date specified by Budget to the Customer then the Customer must return the Goods to Budget on demand. If the Customer does not return the Goods to Budget within 48 hours of the demand, Budget may enter the Customer's premises at any time to do all things necessary to recover the Goods. The Customer shall be liable for all costs associated with the exercise by Budget of its rights under this clause 5, which must be paid on demand.
- 6. INDEMNITIES**
- 6.1 Without prejudice to any other rights Budget may have against the Customer, and to the extent permitted by law:
- the Customer must indemnify Budget for any Losses incurred by Budget should the Customer breach any of these Terms or cancel any purchase order or part of a purchase order for the Goods or Services; and
 - the Customer indemnifies Budget against any Claim made or initiated against Budget by any third party in respect of any damage, death or injury caused by or in any way attributable to the Goods or Services supplied by Budget.
- 6.2 There is no need for Budget to suffer Loss before enforcing clause 6.1.
- 7. WARRANTY**
- 7.1 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are 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. These rights are limited to where the Customer is a "consumer" under the Australian Consumer Law.
- 7.2 In addition to any consumer guarantees that Budget may have to provide the Customer under the Australian Consumer Law, Budget provides the Customer with limited warranties as described in Budget's technical data sheets. This warranty expires 3 months after the date of sale of the Goods, unless Budget states otherwise in writing.
- 7.3 Budget shall bear its own costs and expenses of responding to the Customer's warranty claim. However, the Customer must bear the Customer's own costs in making a warranty claim and all costs of transport of the Goods to Budget.
- 7.4 In relation to this warranty, Budget is not required to pay for claims:
- made outside of the warranty period;
 - for consequential or indirect losses, damages, costs, expenses (including loss of profits, loss of revenue, loss of opportunity, loss of business, loss of reputation, loss of goodwill) or any other losses beyond the normal measure;
- where the Goods have not been installed in accordance with Budget instructions or the manufacturers' recommendations;
 - where the Goods have been modified or are otherwise not installed in their original condition; or
 - where the Goods have been subject to inappropriate use, negligence, accident or any other external factor outside the control of Budget.
- 7.5 To make a warranty claim the Customer must contact Budget directly on (03) 9544 1977 during Business Hours, by email at sales@budgetgroup.net or by post PO Box 1092 Huntingdale VIC 3166 within 7 days of identifying the alleged defect and within the warranty period.
- 7.6 Budget may need to inspect the Goods and may require the Customer to provide Budget with the Goods or access to the Goods within 7 days.
- 7.7 Within 21 days of carrying out an inspection (if necessary) or otherwise within 21 days of the date of the warranty claim, Budget shall determine whether or not to honour the warranty claim and shall notify the Customer.
- 8. DEFAULT**
- If the Customer fails to make due payment for any Goods or Services supplied by Budget or commits a breach of these Terms, or any other term of the sale, or by act or omission enables the appointment of an administrator, scheme manager, trustee, receiver, receiver and manager, liquidator, controller or any other person authorised to enter into possession or assume control of any property of the Customer, Budget may, without prejudice to any other rights it may have, do any or all of the following:
- withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owing or accrued;
 - withhold any further deliveries of Goods or performance of Services required under any accepted purchase order; and
 - suspend and/or terminate performance of any other contracts which Budget has with the Customer.
- 9. LIMITATIONS OF LIABILITY**
- 9.1 Subject to clause 7 and to the extent permitted by law, all implied conditions, warranties, guarantees and undertakings are expressly excluded and except as provided in this clause 9, Budget is not liable for any Losses arising out of or in connection with any breach of contract by Budget or any negligence of Budget, its employees or agents and the Customer releases Budget from all Claims for such Losses.
- 9.2 To the extent permitted by law, if Budget is liable for a breach of a guarantee implied by the Australian Consumer Law (not being a condition or warranty implied by Section 64 of the Australian Consumer Law) then its liability for a breach of any such guarantee shall be limited, at its option, to any one or more of the following:
- in the case of Goods: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or acquiring equivalent goods, or the payment of the cost of having the Goods repaired;

- (b) in the case of Services: the supply of the Services again, or the payment of the cost of having the Services supplied again.
- 9.3 The Customer acknowledges that it does not rely and that it is unreasonable for the Customer to rely on the skill or judgement of Budget as to whether the Goods are reasonably fit for the purpose for which the Goods are being acquired or (and the Customer acknowledges that it does not rely and that it is unreasonable to rely on Budget skill or judgement) as to the fitness for purpose for which the Services are being acquired and any materials supplied in connection with those Services.

10. **ERRORS IN DOCUMENTS**

Clerical errors and misprints in computation, typing or otherwise in Budget's documents including quotes, published price lists, catalogues, delivery dockets, invoices, statements or credit notes may be corrected by Budget at any time by means of reissue of the document or by adjusting dockets with reference to the original transaction.

11. **ASSIGNMENT**

- 11.1 Budget reserves the right to assign or sub-contract its obligations to the Customer to any third party.
- 11.2 Except with the prior written consent of Budget (which consent may be withheld by Budget at its sole discretion), the Customer must not assign, novate or sub-contract any of its rights or obligations under these Terms or any Sales Note.
- 11.3 Where the Customer sub-contracts or assigns its obligations under clause 11.2, Budget reserves, and the Customer grants to Budget, the right to pursue the Customer as principally liable for any amounts owed to Budget.

12. **FORCE MAJEURE**

Budget shall not be liable for any claims for non-fulfilment or late delivery should actual delivery of the Goods or any parts or any Services be prevented or delayed in consequence of unforeseen events, including strikes, unforeseen breakdown of machinery, suspension of electricity or other relevant power supply, riots, war, acts of terror, robbery, civil commotion, adverse weather conditions, disaster caused by fire or water, action of government or port authority, delay of vessel, embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply the Goods or components in a timely manner.

13. **ENTIRE AGREEMENT**

These Terms contain the entire agreement between the parties on the subject matter of these Terms, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings relating to the subject matter of these Terms. Any variation or modification of these Terms must be in writing and agreed by both parties.

14. **NO WAIVER**

Budget's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

15. **SEVERABILITY**

If any provision of these Terms is held invalid,

unenforceable or illegal for any reason, these Terms remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

16. **NOTICES**

- 16.1 Notices under these Terms must be in writing and in English and may be delivered by hand, post or email to the address or email address notified by the relevant party.
- 16.2 A notice is taken to be received:
- (a) in the case of posting, on the third Business Day after posting;
 - (b) in the case of email, at the time the email was received by the recipient's mailbox during Business Hours. If not during Business Hours, at 9.00am (Melbourne time) on the next Business Day;
 - (c) in the case of hand delivery, when delivered if during Business Hours. If not during Business Hours, at 9.00 am (Melbourne time) on the next Business Day; and
 - (d) in the case of pre-paid registered post, two Business Days after posting.

17. **GOVERNING LAW**

The laws of the State of Victoria govern these Terms. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.

18. **DEFINITIONS AND INTERPRETATION**

In these Terms:

- (a) a reference to includes or including should be construed without limitation;
- (b) a reference to legislation or a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (c) "**Australian Consumer Law**" means the Australian Consumer Law of the *Competition and Consumer Act 2010* (Cth);
- (d) "**Business Day**" means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia;
- (e) "**Business Hours**" means between 9.00 am and 5.00 pm (Melbourne time) on a Business Day;
- (f) "**Claims**" means any and all claims, demands, actions and proceedings;
- (g) "**Excluded Interest**" means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;
- (h) "**Losses**" means any and all losses, costs, damages, liabilities, outgoings, payments, judgments, penalties and expenses;
- (i) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth);
- (j) "**Purchase Money Security Interest**" and "**Security Interest**" have the same meaning as under the PPSA.