

Terms & Conditions of Trade for Cutter Art Customers

21 January 2014

1. Definitions

In these Terms and Conditions the following expressions have the following meaning:

'Contract' means the legal relationship created between the Customer and Cutter Art in agreeing to an exchange of Goods and/or Services in return for consideration resulting from the Customer accepting a quotation or invoice from Cutter Art for the supply of Goods and Services or from Cutter Art accepting an order for the Goods and /or Services from the Customer;

'Customer' means the Customer of Cutter Art or any person acting on behalf and with the authority of the Customer;

'Cutter Art' means the business operated by Beltana Holdings Pty Ltd atf Beltana Trust and Landfield Holdings Pty Ltd atf Atkinson Family Trust with whom the Customer has contracted for the supply of Goods and Services;

'Goods' shall mean goods manufactured and supplied by Cutter Art to the Customer as described in the quotations and invoices supplied by us to the Customer. It shall not include either printed or blank stock supplied by the Customer;

'Services' shall mean Services supplied by Cutter Art to the Customer as described in the quotations and invoices supplied by us to the Customer;

'Terms and Conditions' means these Terms and Conditions of trade which forms part of the Contract

2. Interpretation

In these Terms and Conditions except to the extent that the context otherwise requires:

- 2.1 any party named means and includes any or all of the heirs, executors, administrators and permitted assigns of that party or in the case where the party named is a corporation then the corporation, its successors and permitted assigns;
- 2.2 where two or more persons are named as a party the warranties covenants agreements and deeds of this Terms and Conditions bind them jointly and severally;
- 2.3 in the event of any inconsistency between these Terms and Conditions and any other document, these Terms and Conditions prevail;
- 2.4 any terms defined in the statement of the names and descriptions of the parties has the meaning there defined;
- 2.5 reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for and all legislation and statutory instruments and regulations issued under the legislation;
- 2.6 words denoting individuals or persons include bodies corporate and trusts and vice versa;
- 2.7 headings are for convenience only and do not affect interpretation;
- 2.8 any party referred to in these Terms and Conditions includes that party's officers servants or agents;
- 2.9 reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule in these Terms and Conditions;
- 2.10 reference to any document or deed includes reference to such document or deed as amended, novated, supplemented, varied or replaced from time to time;
- 2.11 words denoting any gender include all genders;
- 2.12 where any word or phrase is given a definite meaning in these Terms and Conditions any part of speech or other grammatical form in respect of such word or phrase have a corresponding meaning;
- 2.13 reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- 2.14 reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in the state of Western Australia notwithstanding that the obligation is to be performed elsewhere, and
- 2.15 where by virtue of the provisions of these Terms and Conditions the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in the place in which such act, matter or thing is to be done then that act, matter or thing must be done on the next succeeding day which is not a Saturday, a Sunday or a public holiday.

3. Validity and Acceptance

- 3.1 Any quotation given by us is valid for 60 days from the date of the quotation.
- 3.2 An order received from the Customer for the supply of Goods and/or Services pursuant to a quotation must be in writing and must clearly state the quotation number to which the order applies.
- 3.3 An order received from the Customer for the supply of the Goods and/or Services without a quotation will be charged by Cutter Art in accordance with its internal pricing structures.
- 3.4 Pricing supplied by the Customer on the order that is contrary to our valid quote or internal pricing structures will not be honoured.
- 3.5 The written order shall constitute the Customer's acceptance of these Terms and Conditions as described herein.

4. Quotation

- 4.1 The quotation given by Cutter Art is based on Cutter Art's interpretation of the information supplied by the Customer. If Cutter Art's interpretation of the information supplied by the Customer is incorrect, the quotation shall become invalid and a new quotation will be supplied by Cutter Art.
- 4.2 The quotation is subject to additional charges as set out below.

5. Additional Charges

The Customer agrees an additional payment over and above the quotation is/maybe applicable where:

- 5.1 The order received is different to that described within the quotation;
- 5.2 Any design, drawing or samples are requested, irrespective of whether or not the order proceeds past the experimental stage;
- 5.3 Design, drawing & sample work must be completed by Cutter Art in the event that the order can not progress until such work is completed;
- 5.4 Urgent orders are placed requiring an expedited turnaround;
- 5.5 Additional machine time is occupied whilst waiting for the Customer to press check an order;
- 5.6 Where the stock weight is less/more than our recommended minimum and maximum ranges and takes longer to process;
- 5.7 Plain cartons are supplied by Cutter Art to pack the order, [the quantity of cartons required being undeterminable until the order is assembled and packed].
- 5.8 Extra machine set-ups and/or additional machine or hand finishing processes are required.

6. Price and Payment

- 6.1 At the sole discretion of Cutter Art the price shall be any one of the following:
 - (a) as indicated on Cutter Art's quotation plus any additional charges set out above;
 - (b) as indicated on Cutter Art's invoice; or
 - (c) Cutter Art's current pricing.
- 6.2 At the discretion of Cutter Art a deposit may be required prior to the commencement of any work.
- 6.3 Cash Purchases will be paid in full on or before completion of the order and will be paid for by cash, EFT or bank cheque.
- 6.4 Credit purchases where applicable, will be paid for by cash, cheque, bank cheque or EFT within 30 days of the statement being issued and without deduction unless otherwise agreed by us in writing.
- 6.5 The price will be increased by the amount of GST unless it is stated as being included in our quotation.

7. Credit Facility

Cutter Art may vary or cancel any credit facility without notice and will not be liable to the Customer for any reason as a result of this action.

8. Overdue Accounts

- 8.1 Where credit purchases remain unpaid at the end of the month following the month payment is due, the Customer agrees that Cutter Art has the right to:
 - (a) accept further requests for Goods and/or Services as a cash purchase until such time as any overdue amount is paid in full;
 - (b) cancel the credit facility;
 - (c) levy a monthly fee of \$15.00 or 6.00 % per annum on the amount (calculated daily and charged monthly), whichever ever is the greater until such time as the amount is paid.
- 8.2 In the event that it appears the Customer will be unable to meet its payments as they fall due Cutter Art shall be entitled to cancel all or any part of any order that is yet to be fulfilled and without prejudice to any other remedies available to us at law.
- 8.3 The Customer will pay any costs and expenses incurred by Cutter Art, or its solicitors, legal advisers, mercantile agents and any other party acting on behalf of Cutter Art.

9. Placement of Orders

- 9.1 Cutter Art accepts no liability for the incorrect supply of Goods and/or Services where the instructions supplied by the Customer at the time the order is placed or during the processing of the order prove to be misleading, ambiguous, contradictory, incorrect or incomplete.
- 9.2 In the event of any dispute, the Customer agrees to accept the internal documentation and processing procedures of Cutter Art as conclusive evidence of what was ordered.

- 9.3 Where Cutter Art accepts instructions from the Customer to contact third parties for further information and/or to accept instructions in relation to the Customer's order, Cutter Art accepts no responsibility for the correctness of these instructions and the Customer cannot reject the Goods and/or Services supplied as a result of these instructions, whether they prove to be correct or not at a later date.
- 9.4 Cutter Art accepts no liability for any variations made by the Customer since the quotation was supplied if these variations are not clearly stated as such by the Customer at the time the order is placed.
- 9.5 Cutter Art accepts no responsibility for the supply of incorrect Goods and/or Services if the Customer fails to supply a sample of the Goods and/or Services required at the time the order is placed.
- 9.6 For any orders requiring embossing/debossing blocks, the Customer must clearly state whether the block is to be an emboss or deboss block as viewed from the outside cover.
- 9.7 A vector based pdf file @ 1:1 scale of the dieline shall be supplied by the Customer at the time the order is placed [irrespective of whether or not it has been supplied previously at the quotation stage]. This file shall be supplied as print or outside face, be free of artwork and shall clearly indicate score, perforating and other rule types along with the correct position and notation of such on the dieline. The Customer is responsible for ensuring the dieline is correct and accepts the dieline will take precedence over any written instructions supplied with the order.
- 9.8 All such material supplied to and used by Cutter Art will become the property of Cutter Art.
- 9.9 The Customer shall be solvent and able to pay its debts at the time they fall due.
- 9.10 The Customer must disclose any information that may affect the commercial decision of Cutter Art to accept the order.

10 Part Supply/Forward Order

For any order or forward order, the Customer agrees:

- 10.1 to pay for so much of any order as is invoiced by Cutter Art.
- 10.2 that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

11 Cancellation of Orders

A charge will be applicable for any work completed in the event an order is subsequently cancelled.

12 Customer Restructure

- 12.1 The Customer will notify Cutter Art in writing of any change in its structure or management including any change in director, shareholder, management or change in partnership or trusteeship or of sale of any material part of its business within 7 days of such change, and agrees to be liable to Cutter Art for any purchases from Cutter Art made by any party acquiring any material part of the Customer's business until such notice is given.
- 12.2 The Customer undertakes to give Cutter Art not less than fourteen days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, contact numbers, or business practice).

13 Limitation of Liability

- 13.1 In all instances Cutter Art's liability will be limited to the cost of the die and/or the cost of the finishing component undertaken by Cutter Art.
- 13.2 Cutter Art do not accept responsibility for the cost of stock, print and/or finishing components undertaken by other parties.
- 13.3 Cutter Art will not be liable for any contingent, consequential, direct, indirect, special or punitive damage arising in any way whether due to our negligence or otherwise and the Customer acknowledges this express limit of liability and agrees to limit any claim accordingly.
- 13.4 To the full extent permitted by law, Cutter Art will not be liable for any claim which is made after 14 days of the work being delivered.
- 13.5 Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Buyer by the Trade Practices Act 1974 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement. To the fullest extent permitted by law:
 - i) Cutter Art's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:
 - (1) in the case of Goods, any one or more of the following:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (d) the payment of the cost of having the Goods repaired; or
 - (2) in the case of Services:
 - (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
 - ii) Cutter Art's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Customer an amount equal to:
 - (1) the cost of replacing the Goods;
 - (2) the cost of obtaining equivalent Goods; or
 - (3) the cost of having the Goods repaired, whichever is the lowest amount.

14 Exclusions

The Customer will rely on its own knowledge & expertise in selecting any product or services for any purpose and any advice or assistance given for or on behalf of Cutter Art shall be accepted at the Customer's own risk and shall not be or be deemed given as expert or adviser nor to have been relied upon by or through the Customer.

15 Customer Material

- 15.1 The Customer is responsible for ensuring any drawings, designs or specifications provided by the Customer to Cutter Art are correct, and that they are suitable for Cutter Art's purposes and the Customer acknowledges that any such information provided by the Customer will be relied on by Cutter Art.
- 15.2 In the event that Cutter Art modifies components of the drawings, designs or specifications in order to achieve functionality of the assembled product the Customer agrees that they may not use these modifications as the basis to reject an order.

16 Variations in Quantity

- 16.1 The Customer agrees to accept a variation to quantity so long as this variation does not exceed + or – 5% of the quantity ordered.
- 16.2 Cutter Art shall not be liable when insufficient stock [including a suitable quantity of overs – see item below] is provided by the Customer and as a result Cutter Art is unable to fulfil the order quantity.

17 Supply of Stock

- 17.1 The Customer is responsible for the supply of all stock necessary for Cutter Art to complete the order unless advised otherwise in its quotation.
- 17.2 Cutter Art will not accept any liability in the event that the stock supplied and/or the finishes applied by the Customer prove unsatisfactory on the finished product.
- 17.3 The Customer agrees to supply stock with print and/or finishes that have set and/or are stable. Cutter Art will not accept liability in the event that the Customer fails to supply stock as stated and marking occurs as a result.
- 17.4 Any stock supplied by the Customer over and above the amount required to complete the order will be treated as overs and destroyed 14 days after the order has been filled.
- 17.5 The Customer agrees to provide a suitable percentage of overs with its order or in the case of orders with less than 1000 units a minimum of 50 additional sheets.

17.1.1 Supply of Sample

- 17.1.2 No Contract between Cutter Art and the Customer shall be or be deemed to be a sale by sample.
- 17.1.3 Sample is supplied for the Customer to check and accept all responsibility in regards to style, sizing, strength and suitability for end use.
- 17.1.4 May use different adhesion types and manufacturing processes to complete to that of the final product.

18 Ability to Supply

The Customer agrees that Cutter Art will not be liable for any delay in the supply of Goods or Services.

19 Delivery

- 19.1 Cutter Art will arrange delivery of the order to the Customer's address where it is stated in the quotation using a carrier at the discretion of Cutter Art but will not accept liability for any damage, delays or non-delivery.
- 19.2 Delivery of the order to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms and Conditions.

20 Insurance of stock

Any property of the Customer under Cutter Art's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it, and the Customer shall ensure the property is adequately insured at all times.

21 Packaging

The Customer agrees it is solely responsible for ensuring that all product and any material used for packaging complies with all laws, regulations, standards and packaging covenants applicable thereto and does not breach any copyright or intellectual property rights.

22 Tooling

- 22.1 The Customer agrees that all tooling, blocks, materials, industrial or intellectual property or the like used in the preparation for or production of any products or provision of any services will be and remain the property of Cutter Art despite any contribution by the Customer.
- 22.2 Any die, embossing and/or debossing blocks held by Cutter Art will be destroyed after 12 months has elapsed from date of last use and any subsequent manufacture will be for the Customer's expense.

23 Defect>Returns

- 23.1 The Customer shall inspect the Goods and/or Services supplied on delivery and shall within 14 days of delivery notify Cutter Art in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Cutter Art an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Customer believes the Goods and/or Services supplied is defective in any way. If the Customer shall fail to comply with these provisions, the Goods and/or Services supplied shall be conclusively presumed to be in accordance with these Terms and Conditions and free from any defect or damage.
- 23.2 All Goods and/or Services supplied shall be returned to Cutter Art at the Customer's expense and with all original packaging intact.
- 23.3 Cutter Art uses glue and other adhesives as supplied by the manufacturer and to the fullest extent permitted by law shall not accept liability in the event that these products are faulty and/or prove to be unsuitable for the purpose used.
- 23.4 To the fullest extent permitted by law, Cutter Art does not accept any liability for any orders completed by us after 14 days of the order being completed.
- 23.5 Cutter Art reserves the right to substitute glue types and glue application methods at its discretion. The Customer agrees that a job may not be rejected for this reason.

24 Waiver

If Cutter Art elects not to exercise any rights arising from any breach of these Terms and Conditions it shall not be a waiver of any rights relating to any subsequent or other breach.

25 Notice

The Customer agrees to be bound by any Terms and Conditions of sale adopted by Cutter Art immediately they are so adopted and notwithstanding any other purported or pre-existing Terms and Conditions of Cutter Art. Cutter Art reserves the right to review these Terms and Conditions at any time. If following any such review, there is any change in such Terms and Conditions, advice will be communicated via our quotation form and be made available on our website at www.cutterart.com.au.

26 Severability

Any part hereof being a whole or part of a clause shall be capable of severance without effecting any other part of these Terms and Conditions.

27 Indemnity

The Customer indemnifies Cutter Art against any claim or loss arising from or related to any dealing with Cutter Art or anything arising therefrom, or arising as a result of or subsequent to any breach of these Terms and Conditions or any part of the Trade Practices Act 1974 (Cth).

28 Title

The property in the Goods remain with Cutter Art at all times until all monies owed by the Customer to Cutter Art are fully paid.

29 Risk

If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, Cutter Art is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions (including the right to receive payment of the balance of the price for the Goods and/or Services), to receive all insurance proceeds payable for the Goods. This applies whether or not the price has become payable under the Contract. The production of these Terms and Conditions by Cutter Art is sufficient evidence of Cutter Art's rights to receive the insurance proceeds without the need for any person dealing with Cutter Art to make further enquiries.

30 Intellectual Property

- 30.1 Where Cutter Art has designed and/or drawn dielines for the Customer, then the ownership in those designs and drawings shall remain vested in Cutter Art, and shall only be used by the Customer at Cutter Art's discretion.
- 30.2 Where any designs or specifications have been supplied by the Customer to enable Cutter Art to supply its Goods and/or Services to fulfil the Customer's order, the Customer warrants that the use of those designs or specifications by Cutter Art in the supply of its Goods and/or Services to fulfil the Customer's order shall not infringe the rights of any third party.

31 Products & Services

- 31.1 Cutter Art disclaims any responsibility or liability relating to the completed order or any Goods or Services:
- (a) made or performed to designs, drawings, specifications and or procedures with any materials which are provided or approved by or on behalf of the Customer; or
 - (b) utilised, stored, handled or maintained incorrectly or inappropriately by the Customer.
- 31.2 The Customer agrees to check all products and services for compliance with all applicable standards & regulatory bodies before use, on-sale or application and to use or apply same in accordance therewith and with all Cutter Art recommendations and directions and good commercial practice.

32 General

- 32.1 All Contracts are deemed to be governed by these Terms and Conditions unless specifically excluded or varied in writing and signed by Cutter Art. No terms and conditions sought to be imposed by the Customer which is not contained in these Terms and Conditions shall apply.
- 32.2 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 32.3 Cutter Art shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Cutter Art of these Terms and Conditions.
- 32.4 In the event of any breach of these Terms and Conditions by Cutter Art the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of Cutter Art exceed the amount paid by the Customer to Cutter Art under the Contract.
- 32.5 The Customer shall not set off against the price amounts due to Cutter Art.
- 32.6 Cutter Art may license or sub-contract all or any part of its rights and obligations under the Contract without the Customer's consent.
- 32.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

END