

**TENNYSON GRAPHICS AUSTRALIA PTY. LIMITED. ABN 61 094 507 669**  
**TRADING AS TENNYSON GRAPHICS®**  
**TERMS AND CONDITIONS OF SALE**

**1. Interpretation**

- 1.1 In these terms and conditions and in any contract to which they apply:
- (a) "Seller" means Tennyson Graphics Australia trading as Tennyson Graphics® or any other company that is a related body corporate of Tennyson Graphics Australia Pty. Limited which accepts any order from the Purchaser for the Goods;
  - (b) "Purchaser" means the person, association, partnership, company or business described as the buyer or purchaser on the quotation/order form/invoice/order confirmation/statement;
  - (c) "Goods" means any items, goods or materials sold by the Seller to the Purchaser or which the Seller has agreed to sell to the Purchaser subject to these terms and conditions;
  - (d) "Act" means the Trade Practices Act 1975 (Cwth) as amended from time to time and also the applicable laws of any State or Territory of Australia corresponding thereto (including the Fair Trading Act 1999 of Victoria) and any reference to any section or part of that Act also includes a reference to the corresponding provisions (if any) of such laws; and
  - (e) headings and bold type are for convenience only and do not affect the interpretation of this contract;
  - (f) words importing the singular include the plural and vice versa;
  - (g) words importing a gender include any gender;
  - (h) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
  - (i) other parts of speech and grammatical forms of a word or phrase defined in this contract have a corresponding meaning; and
  - (j) a reference to a part, paragraph, clause, party, annexure, exhibit or schedule is a reference to a part, paragraph and clause of, and a party, annexure, exhibit and schedule to, this contract.
- 1.2 These terms and conditions of sale apply to the sale and supply of all the Goods to the exclusion of all other terms and conditions whatsoever whether contained or implied in or from any order from the Purchaser or from any conduct of or representations made by the Purchaser or the Seller.

**2. Quotations and Creation of Binding Contract**

- 2.1 Any quotation made by the Seller or its agents does not constitute an offer to supply or sell the Goods to the Purchaser or any other person and no binding contract will exist between the Seller and the Purchaser unless and until the Seller accepts an order for the Goods from the Purchaser by the Seller issuing an order confirmation to the Purchaser or the Seller delivering the Goods to the Purchaser, whichever is the earlier. Upon doing so, a contract (hereinafter referred to as "this contract" or "the contract") will be created for the supply of the Goods the subject of the order by the Seller to the Purchaser and incorporating all these terms and conditions of sale into the contract.
- 2.2 If the Purchaser seeks any variation to an order after the Seller has issued an order confirmation then the Seller is free to either accept the variation or not and if the Seller does not agree to the variation then the Seller is free to terminate the contract without any liability on the part of the Seller. If the variation is sought at any time after the Seller has incurred labour costs, purchased materials or commenced production in respect of the order then the Purchaser shall be liable for the full purchase price notwithstanding any termination of the contract by the Seller.

**3. Prices**

- 3.1 Unless otherwise agreed in writing, all prices quoted:
- (a) include the cost of delivery by the Seller and/or its agents to the Purchaser and basic packaging; and
  - (b) include goods and services tax.

**4. Supply and Delivery**

- 4.1 The Seller reserves the right of supplying any order in full or in part or by instalments at its discretion.
- 4.2 Any time or date named or accepted by the Seller for delivery, dispatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract or part of the description of the Goods. Time for completion and delivery, dispatch, shipment or arrival of the Goods is not of the essence of the contract.

**5. Terms of Payment**

- 5.1 Payment shall be made by cash or cleared funds within 30 days of the date of the Seller's invoice issued to the Purchaser. Time for payment of the Seller's invoiced Goods is of the essence of the contract.
- 5.2 If payment in full is not made before the due time the Seller may charge the Purchaser interest on the amount outstanding at the rate of 12% per annum calculated on a daily basis from the date of delivery of the Goods to the Purchaser until the date of actual full payment in cleared funds.
- 5.3 The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counter-claim.

**6. Title and Risk**

- 6.1 (a) Property in and title to all Goods sold or supplied by the Seller shall remain with the Seller and shall not pass to the Purchaser (notwithstanding that the Goods or some part of them may have been delivered to the Purchaser) until the Purchaser has paid all sums owed by it to the Seller in respect of those Goods, and the Seller shall be entitled to a general lien on all goods of the Purchaser in the possession of the Seller whether paid for or not and whether in respect of this or any other contract.
- (b) The Purchaser acknowledges and admits that until such time as the Goods are sold by the Purchaser to its customers by way of bona fide sale for market value it shall hold the Goods as bailee for the Seller and the Seller is contracting with the Purchaser in reliance on this provision and that the Purchaser shall be stopped from denying this admission.
- (c) The Seller shall be entitled to recover, or require immediate re-delivery of the Goods on demand and for the purpose of such recovery or re-delivery of Goods the Seller shall be entitled and the Purchaser hereby grants to the Seller, its officer, servants or agents full and unrestricted licence to enter upon the premises of the Purchaser (or other premises at which the Goods may be located) to remove the Goods from such premises and such return or re-taking of possession shall be without prejudice to the obligation of the Purchaser to purchase the Goods if the Seller so requires (whether or not subject to any condition as to payment or otherwise which the Seller in its sole discretion may impose).
- (d) The Purchaser agrees to store the Goods separately so as to indicate the Seller's ownership of the Goods and to keep full records of them, until the Purchaser has paid all sums owed by it to the Seller in respect of those Goods.
- 6.2 Goods supplied by the Seller to the Purchaser shall be at the Purchaser's risk immediately on delivery to the Purchaser or into the custody of the Purchaser or its agent (whichever is the sooner) and the Purchaser should insure the Goods thereafter against such risks as it thinks appropriate.
- 6.3 The Purchaser and Seller agree that the provisions of this clause apply notwithstanding any arrangement between the parties under which the Seller grants the Purchaser credit in excess of the credit allowed herein.

**7. Cancellations, Returns, Credits and Claims**

- 7.1 Orders placed by the Purchaser cannot be cancelled once production or dispatch of the Goods the subject of the order has commenced and the Purchaser shall be liable for the full purchase price notwithstanding any purported cancellation of an order.
- 7.2 No Goods delivered will be accepted for return without the prior agreement of the Seller.
- 7.3 Requests for credits arising from incorrect invoicing must be made before the due date for payment of the invoice in question.
- 7.4 Any claims for non-delivery, shortage in supply or damage occurring during the course of delivery or any claim for rejects by the Purchaser must be in writing and given to the Seller within 14 days after the date of delivery and any claim which the Purchaser does not notify within that time (time being of the essence) shall be deemed to have been absolutely waived by the Purchaser.

7.5 The Seller will not consider any claim for replacement or make allowance afterwards for the supply of equivalent Goods unless all information which is required by the Seller is furnished in writing and signed by the Purchaser and the Purchaser has complied with all other provisions of these terms and conditions of sale. Should the Seller in its sole discretion consider any Goods the subject of any such claim to be defective in quality then the Seller may either replace the Goods or make other allowance towards the supply of equivalent Goods in which case the Goods so replaced shall be returned to the Seller within 30 days and become the Seller's property.

#### **8. Purchaser's Warranties and Indemnities**

- 8.1 The Purchaser warrants to the Seller that product liability insurance insuring the Purchaser and the Seller against any future product liability claim in respect of the Goods with a reputable insurer is in place at the date of the contract and will be maintained, at the cost of the Purchaser.
- 8.2 The Purchaser hereby indemnifies and agrees to keep indemnified the Seller against any liability, loss, damage, expense or cost incurred or suffered as a result of the use by any person of any of the Goods except where and to the extent such liability, loss, damage, expense or cost is caused by the negligence of the Seller. The parties acknowledge that where the Seller has manufactured the Goods in accordance with the specifications of the Purchaser, the Seller shall not be negligent for the purposes of this clause.
- 8.3 The Purchaser shall be responsible for ensuring all materials and other items delivered by the Purchaser or on the Purchaser's behalf to the Seller are of a merchantable quality, fit to be used by the Seller in supplying the Goods and free from any defects.
- 8.4 The Purchaser hereby indemnifies and agrees to keep indemnified the Seller against any liability, loss, damage, expense or cost incurred or suffered as a result of any materials and other items delivered by the Purchaser or on the Purchaser's behalf to the Seller and used by the Seller in supplying the Goods which are not of a merchantable quality nor which are fit to be used by the Seller in supplying the Goods or which are defective, including any costs and overhead expenses incurred because of the Seller having to repeat a production run.

#### **9. Limitation of Liability**

- 9.1 Subject to clauses 9.2 and 9.3 below, all guarantees, conditions, terms, warranties, promises, representations or obligations written or oral expressed or implied by contract agreement statute or otherwise in relation to the subject matter of this contract which are not expressly stated herein or necessarily implied by law where it is unlawful or not valid to exclude the same are hereby expressly excluded from this contract and all sales or supply of Goods under it.
- 9.2 Nothing herein contained shall exclude restrict or modify the rights or remedies of any person or any implied conditions warranties or undertakings provided for in relation to the subject matter of this contract under the Act which cannot be lawfully or validly excluded restricted or modified by agreement between the parties.
- 9.3 Should the Seller be liable for breach of a condition or warranty implied by Division 2 of Part V of the Act (not being a condition or warranty implied by Section 69 of the Act) the liability of the Seller for such breach shall, subject to Section 68A of the Act, be limited to one of the following as determined by the Seller in its discretion:
- (a) the replacement of the Goods; or
  - (b) the supply of equivalent Goods.
- 9.4 Subject to clauses 9.2 and 9.3 above, the Seller shall not be responsible or liable to the Purchaser or any other person for and the Purchaser hereby releases the Seller from:
- (a) any non-performance or delay in performing any obligation under this contract or any damage to or defect in any Goods supplied to the Purchaser which is caused or influenced by any circumstances beyond the control of the Seller including, but without being limited to, any matter or circumstance caused by or arising from or out of any act of God, flood, lightning, storm, fire, explosion, act of war, riot, third party malicious damage, third party theft, break-in, industrial action or dispute or governmental or industrial embargo, machinery breakdown or any other exceptional or unexpected cause; or
  - (b) any liability in tort or contract or otherwise for or in respect of any direct, indirect and/or consequential loss, damage, expense or injury occasioned or suffered by the Purchaser or any other person due to or arising out of or in connection with the performance, non-performance or any breach or other matter arising out of this contract including negligence or wilful act or default of the Seller or any of its officers employees or agents and for the purposes of this clause "consequential loss" shall include but shall not be limited to loss of profit, use and/or goodwill and any payment made or due to any third party and any loss or damage caused by delay in the satisfaction of any obligation under this contract or any order together with any expenses incurred by the Purchaser in connection therewith or arising or incurred in mitigation or attempted mitigation of such loss or damage.

#### **10. Authority to Vary Terms and Conditions**

- 10.1 No manager, employee, servant, agent or representative of the Seller (other than a director and then only in writing) has any authority to vary these terms and conditions or any of them and without limiting the generality of the foregoing no warranty, representation, promise, agreement, term or condition whether express or implied made by any such person shall be deemed to be included in or form part of these terms and conditions of sale or operate in any way collateral to these terms and conditions of sale other than those warranties, representations, promises, agreements, terms or conditions which expressly appear herein or which are implied by law and not excluded under clause 9.

#### **11. Exclusion of Previous Agreements**

- 11.1 The provisions herein contained override and replace all terms and conditions of any previous contract between the Purchaser and the Seller to the extent of any inconsistency between these provisions and those terms and conditions.

#### **12. Waiver**

- 12.1 Any delay in or failure by the Seller to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

#### **13. Severance**

- 13.1 If any provision of this contract shall be determined by any statute or any court having jurisdiction in relation thereto to be illegal invalid void voidable or unenforceable the legality validity or enforceability of the remainder of this contract shall not be affected and the illegal invalid void voidable or unenforceable provision shall be deemed deleted herefrom to the same extent and effect as if never incorporated herein but the remainder of this contract shall continue in full force and effect.

#### **14. Governing Law**

- 14.1 This contract shall be governed by and interpreted in accordance with the laws for the time being in force in Victoria and the parties agree to submit to the non exclusive jurisdiction of the courts of Victoria.

#### **15. Survival**

- 15.1 These terms and conditions shall survive any accepted repudiation or other termination of the contract to supply to Goods existing between the Seller and the Purchaser.

#### **16. GST**

- 16.1 In this contract:  
"GST" or "Goods and Services Tax" means a tax, duty, levy, charge or deduction, imposed by or under a GST law, together with any related additional tax, interest, penalty, fine or other amount imposed in respect of the above. "GST law" means the same as in the A New Tax System (Goods and Services Tax) Act 1999. "Supply" has the same meaning as given by section 195 of the GST law.
- 16.2 All prices payable by the Purchaser to the Seller for the supply of the Goods are inclusive of GST.
- 16.3 To the extent that any moneys payable by the Purchaser to the Seller under an indemnity in this contract or for breach of warranty are regarded, for the purposes of the GST law, as consideration (in whole or part) for a taxable Supply made by the Seller, the Purchaser must pay an additional amount to the Seller calculated by multiplying the prevailing GST rate by the consideration payable to the Seller for the relevant Supply.