

GENERAL TERMS AND CONDITIONS

1. Definitions

For the purpose of this contract:

Consequential Loss means any loss or damage arising from a breach of contract or agreement (including breach of this contract), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss whether or not contemplated by the parties at the time of entering this contract.

Customer means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation, or the Customer/Applicant identified in the cover page of a credit application or other form as provided by PDQ to the Customer.

Customer Supplied Items means any goods, information or materials provided by the Customer to PDQ in order to allow PDQ to provide the Goods and/or Services.

Goods means all goods supplied by PDQ to the Customer (and where the context so permits will include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by PDQ to the Customer.

GST means the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IP Rights means patent, trademark, design, copyright or any other intellectual property right.

PDQ means PDQ Printing Company Pty Ltd trading as PDQ Labels (ABN 69 079 465 142), its successors and assigns.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means all monies payable by the Customer to PDQ in accordance with this contract (including with respect to the Goods and/or the Services).

Services means any services supplied by PDQ to the Customer and includes any advice or recommendations relating to the provision of such services.

2. Acceptance

- 2.1 Any instructions received by PDQ from the Customer for the supply of Goods will constitute acceptance of the terms and conditions set out in this contract.
- 2.2 Where more than one (1) Customer has entered into this contract, the Customers will be jointly and severally liable for all payments of the Price.
 - (a)
 - (b)
- 2.3 Upon acceptance of this contract by the Customer, this contract will be legally binding and can only be amended with the written consent of PDQ.
- 2.4 The Customer must give PDQ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer (including any change in the Customer's name, any change to the majority ownership in shares, sale of business and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer will be liable for any loss incurred by PDQ as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by PDQ only on the terms and conditions set out in this contract to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override any provision of this contract.

3. Price and Payment

- 3.1 The Price will be:
 - (a) as indicated on invoices provided by PDQ to the Customer in respect of Goods supplied;
 - (b) PDQ's current price at the date of delivery of the Goods according to PDQ's current Price list; or
 - (c) PDQ's quoted Price (subject to clause 3.2) which will be binding upon PDQ provided that the Customer accepts PDQ's quotation in writing within thirty (30) days.

Where there is any discrepancy, the document as advised by PDQ will prevail to the extent of any inconsistency.

- 3.2 PDQ reserves the right to change the Price in the event of a variation to PDQ's quotation. Any variation may arise due to, but in

no way limited to, additional works required due to hidden or unidentifiable difficulties beyond the control of PDQ, change in specifications, or as a result of increases to PDQ in the cost of materials and labour, and will be charged for on the basis of PDQ's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full on the due date of the relevant invoice.

- 3.3 At PDQ's sole discretion and as notified by PDQ to the Customer, a non-refundable deposit may be required prior to PDQ commencing any works under this contract.
- 3.4 Time for payment for the Goods will be of the essence and will be stated on the invoice issued by PDQ. If no time is stated in the invoice, then payment will be on delivery of the Goods.
- 3.5 PDQ will be under no obligation to release any Goods or Customer Supplied Items unless all overdue amounts are paid to it.
- 3.6 If applicable, any discounts applicable to the Price will become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 3.7 The Customer acknowledges and agrees that additional fees and charges may be charged as notified by PDQ to the Customer for express orders which are requested by the Customer and agreed to by PDQ and which means orders are processed and completed prior to PDQ's standard lead-in times.
- 3.8 Payment by the Customer must be made by cash, by cheque or bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and PDQ.
- 3.9 Unless otherwise expressly stated, GST, delivery costs and other taxes and duties that may be applicable will be added to the Price.

4. Delivery of Goods

- 4.1 **Delivery** of the Goods will be deemed to have taken place upon the earlier of:
 - (a) the Customer taking possession of the Goods at PDQ's premises; or
 - (b) a carrier taking possession of the Goods from PDQ's premises for delivery to the Customer's nominated address in which event the carrier will be deemed to be the Customer's agent.
- 4.2 Unless otherwise expressly agreed in writing by PDQ, where a quote or invoice does not include delivery costs, the costs of Delivery are:
 - (a) in addition to the Price; and
 - (b) for the Customer's account.
- 4.3 The Customer must make all arrangements necessary to take Delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then PDQ will be entitled to charge redelivery fees in the case where a carrier has been engaged by PDQ.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be Delivery to the Customer for the purposes of this contract.
- 4.5 PDQ may deliver the Goods by separate instalments. Each separate instalment must be invoiced and paid in accordance with the provisions in this contract.
- 4.6 The Customer must take delivery of the Goods tendered notwithstanding that the quantity so delivered is either greater or lesser than the quantity purchased provided that:
 - (a) such discrepancy in quantity does not exceed five percent (5%); and
 - (b) the Price will be adjusted pro rata to the discrepancy.
- 4.7 The failure or delay of PDQ to deliver will not entitle either party to treat this contract as repudiated.
- 4.8 PDQ will not be liable for any loss or damage whatsoever due to failure by PDQ to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of PDQ.

5. Risk and insurance

- 5.1 All risk in the Goods passes to the Customer on Delivery. It is the Customer's responsibility to effect carrier/freight insurance and the insurance with respect to the Goods when they are collected from PDQ's premises either by the Customer or a carrier.
- 5.2 Where the Goods are delivered to an unattended location then such

Goods will be left at the Customer's sole risk and it will be the Customer's responsibility to ensure the Goods are insured adequately or at all.

- 5.1 If any of the Goods are damaged or destroyed following collection from PDQ's premises, PDQ is entitled to receive all insurance proceeds up to the amount of the monies payable by the Customer for the Goods. The production of this contract by PDQ is sufficient evidence of PDQ's rights to receive the insurance proceeds without the need for any person dealing with PDQ to make further enquiries.

6. Title

- 6.1 PDQ and the Customer agree that ownership of the Goods will not pass until:
- (a) the Customer has paid PDQ all amounts owing for the particular Goods (and, if applicable, any Services related to those Goods); and
 - (b) the Customer has met all other obligations due by the Customer to PDQ in respect of all contracts between PDQ and the Customer.
- 6.2 Receipt by PDQ of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then PDQ's ownership and rights in respect of the Goods will continue.
- 6.3 It is further agreed that:
- (a) where practicable the Goods must be kept separate and identifiable until PDQ has received payment and all other obligations of the Customer are met;
 - (b) until such time as ownership of the Goods passes from PDQ to the Customer in accordance with this contract, PDQ may at any time prior give notice in writing to the Customer to return the Goods or any of them to PDQ as a result of the breach of this contract by the Customer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods will cease;
 - (c) PDQ will have the right of stopping the Goods in transit whether or not delivery has been made if the Customer is in default under this contract;
 - (d) if the Customer fails to return the Goods to PDQ then PDQ or PDQ's agent may (as the invitee of the Customer) enter upon and onto land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods and the Customer grants its irrevocable authority to do so;
 - (e) the Customer is only a bailee of the Goods and until such time as PDQ has received payment in full for the Goods then the Customer holds any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to PDQ for the Goods, on trust for PDQ. The Customer must not deal with the money of PDQ in any way which may be adverse to PDQ;
 - (f) the Customer must not charge, or grant a security interest over, the Goods in any way whilst they remain the property of PDQ; and
 - (g) PDQ may commence proceedings to recover the Price notwithstanding that ownership of the Goods may not have passed to the Customer.

7. Personal Property Securities Act 2009 ("PPSA")

- 7.1 In this clause:
- (a) the terms 'attachment', 'financing statement', 'financing change statement', 'purchase money security interest' and 'security interest' have the meaning given to it by the PPSA; and
 - (b) the term 'security agreement' means the security agreement under the PPSA created between the Customer and PDQ pursuant to this contract.
- 7.2 The Customer acknowledges and agrees that this contract:
- (a) constitutes a security agreement for the purposes of the PPSA; and
 - (b) creates a security interest in:
 - (i) all Goods previously supplied by PDQ to the Customer (if any); and
 - (ii) all Goods that will be supplied in the future by PDQ to the Customer,including, without limitation, a purchase money security interest over the Goods and that the attachment of the security interest over the Goods has in no way been deferred or postponed.

7.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PDQ may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
- (b) indemnify, and upon demand reimburse, PDQ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of PDQ;
- (d) not to do anything that results in PDQ having less than the security or priority granted by the PPSA that PDQ assumed at the time of that perfection;
- (e) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of PDQ; and
- (f) immediately advise PDQ of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

7.4 PDQ and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this contract.

7.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

7.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

7.7 Unless otherwise agreed to in writing by PDQ, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

7.8 The Customer must unconditionally ratify any action taken by PDQ under this clause in relation to the enforcement of its security interest.

8. Lien and storage charges

8.1 If the Customer fails to collect the Goods or Customer Supplied Items (the **Relevant Items**) within one (1) month of PDQ notifying the Customer that the order has been completed, then the Goods may be warehoused or otherwise held at any place or places at the sole discretion of PDQ at the Customer's expense and which will be payable by the Customer until the Customer complies with all of the requirements and conditions of PDQ.

8.2 If the Customer fails to collect the Relevant Items by the time referred to in clause 8.1, then without limiting PDQ's right to charge storage fees, PDQ (at its absolute discretion) may dispose of the Relevant Items, including by sale or otherwise without any further notice to the Customer. The Customer:

- (a) cannot make any claim against PDQ if PDQ elects to exercise its rights under the preceding sentence; and
- (b) must reimburse and indemnify PDQ for all costs or claims incurred by PDQ in connection with PDQ exercising its rights under this clause.

8.3 In addition to any right of lien to which PDQ may by law be entitled, PDQ is entitled to a general lien on all Relevant Items in PDQ's possession for the unpaid price of any Goods and/or Services under this contract.

9. Warranty, defects and returns

9.1 To the fullest extent permitted by law, liability of PDQ for any breach of this contract arising as a result of the negligence of PDQ or for breach of any conditions or warranty implied in this contract or by law is limited to one of the following at PDQ's option:

- (a) 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 costs of replacing the Goods or of acquiring equivalent Goods; or the

payment of the cost of having the Goods repaired.

- (a) In the case of Services - the supplying of the services again; or the payment of the cost of having the services supplied again.

9.2 Subject to clause 9.8, to the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negated.

9.3 The Customer assumes all risk and liability resulting from the use of the Goods or the Services either alone or in conjunction with other goods or materials even if PDQ had or should have had prior knowledge of use to which the Goods and/or Services would be put.

9.4 The Customer is responsible for:

(a) storing and using the Goods in a proper manner; and

- (b) undertaking a final proof read, check and verification of the Goods prior to or during the inspection period at clause 9.6 and prior to applying the Goods to any other goods or otherwise commercialising or using the Goods. PDQ is not liable for any errors in the Goods after the inspection period afforded to the Customer to identify any such errors has ended.

9.5 PDQ is in no way liable under any manufacturer warranties related to the Goods.

9.6 The Customer must inspect the Services on completion or Goods on Delivery and must within seven (7) days of delivery (time being of the essence) notify PDQ in writing of any alleged defect, error, shortage in quantity, damage or failure to comply with the description or quote.

9.7 The Customer must afford PDQ an opportunity to inspect the Services or Goods (as the case may be) within a reasonable time following delivery if the Customer believes the Services or Goods (as the case may be) are defective in any way. If the Customer fails to comply with these provisions the Services and/or the Goods will be deemed to be free from any defect or damage.

9.8 PDQ acknowledges that the goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for 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.

9.9 Where Goods are defective due to the Customer's requirements, specifications or Customer Supplied Items, PDQ will not be liable for such defects.

9.10 To the fullest extent permitted by law, PDQ will not accept any returns, including for change of mind or the Goods and/or the Services not being fit for the purpose or use as intended by the Customer. In that respect the Customer acknowledges and agrees that it has made its own enquiries and undertaken its own due diligence with respect to the Goods and Services provided by PDQ and satisfied itself in that regard.

10. Default and Consequences of Default

10.1 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at the rate of 2.5% per month.^(a)

10.2 If an invoice is overdue for more than sixty (60) days after it was due and payable, the greater of \$20.00 or ten percent (10%) of the outstanding monies owed under the invoice will become immediately due and payable by the Customer in addition to and as part of the overdue invoice.

10.3 In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by PDQ.

10.4 If the Customer:

- (a) defaults in payment of any invoice when due;
- (b) defaults in the performance of any obligation imposed on it under this contract; and/or
- (c) breaches any warranty or representation contained in the contract,

the Customer indemnifies PDQ from and against all liability, claims, losses, damages, costs and fines and disbursements incurred by PDQ in connection with that default (including, without limitation, pursuing the debt including legal costs on a solicitor and own client basis and PDQ's collection agency costs). For the avoidance of doubt, PDQ does not have to incur an expense or cost before claiming the benefit of the indemnity provided under this clause.

10.5 Without prejudice to any other remedies PDQ may have, if at any time the Customer is in breach of any obligation (including those relating to payment) PDQ may suspend or terminate the supply of Goods and/or the Services to the Customer and any of its other obligations under this contract. PDQ will not be liable to the Customer for any loss or damage the Customer suffers because PDQ has exercised its rights under this clause.

10.6 Without prejudice to PDQ's other remedies at law, PDQ will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PDQ will, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to PDQ becomes overdue, or in PDQ's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, administrator, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of the Customer or any asset of the Customer.

11. Cancellation, variations and delays

11.1 PDQ may cancel this contract or cancel delivery of Goods at any time before the Goods are completed or delivered by giving written notice to the Customer if:

- (a) the Customer is in default, in which case all costs incurred by PDQ in that respect will be immediately due and payable by the Customer; or
- (b) PDQ is of the opinion that it cannot fulfil the relevant order, in which case PDQ will provide a refund of the monies paid by the Customer in connection with that order.

11.2 If the Customer cancels or alters an order, or any part of an order then without prejudice to any other rights PDQ has against the Customer, PDQ may charge the Customer any costs incurred by PDQ in fulfilling the order, including materials already acquired for the order together with the cost of any labour and tooling and losses incurred by PDQ in reselling or otherwise disposing of the relevant items.

11.3 Whilst PDQ will take all reasonable measures to ensure that orders are completed by the agreed time, the Customer cannot make any claim (of any nature) as a result of any delays of PDQ in completing the order whether within PDQ's control or otherwise.

12. Intellectual property

12.1 PDQ is not liable to the Customer for any infringement or unauthorised use of any IP Rights arising out of performance of this contract. If any dispute or claim arises with respect to any such matter then PDQ may terminate this contract by notice to the Customer without any liability on the part of PDQ.

12.2 All IP Rights in connection with the provision of the Goods and/or the Services, always remains the sole property of PDQ. The Customer must not do anything which adversely affects the ownership of PDQ or any of its related entities in connection with those IP Rights.

12.3 The Customer warrants that:

- it holds all necessary IP Rights in any Customer Supplied Item; and
- (b) that the Customer's IP Rights do not infringe any rights or entitlements held by any third party.

12.4 The Customer indemnifies and holds harmless PDQ from and against any claims made against or loss suffered by PDQ arising from its use of any Customer Supplied Item.

13. Privacy Act 1988 (Cth)

13.1 The Customer agrees and consents for PDQ to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by PDQ.

13.2 The Customer agrees that PDQ may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other

credit providers; and/or

- (b) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth).

13.11 The Customer consents to PDQ being given a consumer credit report to collect overdue payment on commercial credit.

13.12 The Customer agrees that personal credit information provided may be used and retained by PDQ for the following purposes (and for other purposes as agreed between the Customer and PDQ or required by law from time to time):

- (a) the provision of Goods;
- (b) the marketing of Goods by PDQ, its agents or distributors;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

13.13 PDQ may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

13.14 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that PDQ is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of PDQ, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations);
- (g) advice that a cheque drawn by the have been dishonoured more than once; and/or
- (h) that credit provided to the Customer by PDQ has been paid or otherwise discharged.

13.15 PDQ, without restriction, may provide any personal information, credit reports and any other information relating to the Customer to any insurer of PDQ and the Customer irrevocably consents to the disclosure of such information.

14. Privacy Policy

14.1 The Customer acknowledges and agrees that its personal information may be used in accordance with the Privacy Policy of PDQ and that it has

read and agreed to that policy located at <http://www.pdqlabels.com.au/privacy-policy/>.

- 14.2 Please note that if you provide PDQ with your personal information you consent to receiving direct marketing communications from PDQ and authorise PDQ to send you promotional messages and materials related to PDQ's Goods and Services, unless you submit a request not to receive direct marketing communications.

15. General provisions

15.1 The Customer acknowledges that it purchases the Goods relying solely upon its own skill and judgement and that PDQ is not liable for any representation made to the Customer by PDQ or any of its servants or agents. All descriptive specifications furnished by PDQ or contained in information provided by PDQ are by way of general description of the Goods only.

15.2 Each order the Customer places is, a representation by it made at the time that it is, and will remain in the future, solvent and able to pay all of its debts as and when they fall due.

15.3 If any provision of this contract is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

15.4 This contract will be governed by the laws of New South Wales, Australia and are subject to the exclusive jurisdiction of the courts of New South Wales.

15.5 PDQ will not be under any liability whatsoever to the Customer for any Consequential Loss.

15.6 In the event of any breach of this contract by PDQ the remedies of the Customer will be limited to damages which under no circumstances must exceed the Price of the Goods.

15.7 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PDQ nor to withhold payment of any invoice because part of that invoice is in dispute.

15.8 PDQ may license or sub-contract all or any part of its rights and obligations without the Customer's consent. PDQ may assign any or all of PDQ's rights and obligation under this contract to a third party by providing notice to the Customer.

15.9 The Customer agrees that PDQ may review this contract at any time. If, following any such review, there is to be any change to this contract, then that change will take effect from the date on which PDQ notifies the Customer of such change. Except where PDQ supplies further Goods to the Customer and the Customer accepts such Goods, the Customer will be under no obligation to accept such changes with respect to those Goods already supplied.

15.10 No modification amendments or other variation of this contract will be valid and binding on PDQ unless made in writing and duly executed by and on behalf of PDQ.

15.11 PDQ will not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, Government order or other event beyond the reasonable control of PDQ.

15.12 Each party must keep this contract and related information confidential, except to the extent it is in the public domain through no fault of a party or if required to be disclosed by law.

15.13 The failure by PDQ to enforce any provision of these terms and conditions will not be treated as a waiver of that provision, nor will it affect PDQ's right to subsequently enforce that provision.