

TERMS & CONDITIONS OF SALE OF ICONIX INKS PTY LTD

ABN 99 119 338 304 ITS SUBSIDIARIES AND RELATED ENTITIES

INTERPRETATION: In these terms and conditions ("Terms and Conditions") unless the context otherwise requires:

"Agreed Amount" means any amount payable or consideration to be provided by the Buyer to the Company under any Sales Contract for the supply of Goods or Services.

"the Company" means Iconix Inks Pty Ltd ACN 119 338 304.

"the Buyer" means a person, a business, a company or a party to any contractual arrangement with the Company, for the purchase of Goods or Services.

"Deliver" or "Delivery" means collection of Goods from the Company's premises by or on behalf of the Buyer.

"Ex Works" means that the Company's only obligation is to make the Goods available to the Buyer at the Company's usual point of Delivery of such Goods for loading on the conveyors to be provided by the Buyer. The Buyer shall bear the full cost and risk involved in bringing the Goods from the Company's works or factory to the Buyer's desired destination.

"GST", "GST Law" have the meanings used in the *A New Tax System (Goods & Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations. "GST Law" also includes any applicable rulings.

"Indent Order" means an order placed with the Company by the Buyer whereby the Company in order to satisfy that order, is required to specifically purchase goods or services from a third party because such goods or services are not usually stocked or provided by the Company.

"Standard Products" means the products usually stocked by the Company.

"Sales Contract" means a contract made between the Company and the Buyer for the supply of Goods or Services.

"Goods" means all goods supplied by the Company to the Buyer.

"Services" means all services supplied by the Company to the Buyer.

"Related Entity" has the same meaning as ascribed to that expression in the *Corporations Act 2001* (Cth).

"Return of Materials Authorisation" means the document approved and issued from time to time by the Company (in its sole and absolute discretion) authorising the return of Goods by the Buyer to the Company in accordance with the terms and conditions contained therein.

GENERAL: These Terms and Conditions are deemed to be incorporated into all Sales Contracts (express or implied) for the supply of Goods or Services to the Buyer and supersede all terms and conditions previously issued by the Company. No Sales Contract for the supply of Goods or provision of Services shall exist between the Buyer except upon these terms & conditions unless their exclusion or modification is agreed to in writing by the Company. Any order placed by a Buyer is deemed to be an order incorporating these Terms and Conditions notwithstanding any inconsistencies in the Buyer's order. A reference to any legislation or legislative provision in these Terms and Conditions includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under that legislative provision.

TERMS OF PAYMENT: The terms of payment of the Agreed Amount (plus GST if applicable) are cash on Delivery unless otherwise expressly agreed in writing by the Company. In the event that the Company agrees in writing to payment other than cash on Delivery, the Customer shall pay to the Company the Agreed Amount (plus GST if applicable) within 30 days of the date of invoice. The Company reserves the right to charge interest on overdue amounts owing to it without prior notice to the Buyer at a rate of two per centum (2%) per month or at such other rate as may be fixed from time to time by the Company, such interest to be computed from the date a payment becomes overdue until payment of such monies is received in full. The Company reserves the right to set a minimum invoice value from time to time at its discretion and reserves the right to withhold at any time supply to the Buyer of further Goods or the provision of Services in the event the Buyer fails to comply with the Company's terms of payment or for any other reason.

PRICES: Unless otherwise agreed by the Company in writing pursuant to quotation, the Agreed Amount for the Goods supplied and Services provided shall be the Company's current price list for such Goods and Services at the time of Delivery of the Goods or provision of Services. Any quotations given by the Company are subject to written confirmation. The Agreed Amount and all prices and quotations are given Ex Works of the Company and are exclusive of any tax, impost, duty or other levies. The costs of freight of Goods shall in all circumstances remain the exclusive responsibility of the Buyer. The Company reserves the right at any time between the time of quotation and/or order and the date of Delivery of the Goods or provision of Services to make reasonable adjustments to the Agreed Amount and other prices and quotations given where there has occurred fluctuations in the Company's cost for labour, materials, goods or transport. In the event of fluctuations or change in exchange rates or duties the Company reserves the right at anytime between the time of quotation and/or order and the date of Delivery of the Goods or provision of Services to increase the Agreed Amount for such Goods and Services.

GST: If GST is payable by the Company on any supply (as defined in the GST Act) it makes under or in connection with a Sales Contract-

- the Agreed Amount is exclusive of GST; and
- an additional amount will be payable by the Buyer equal to the amount of GST payable on that supply as calculated by the Company in accordance with the GST Law and payable at the same time and in the same manner as for the Agreed Amount; and
- the Company will provide a tax invoice to the Buyer in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be paid by the Buyer.

DELIVERY: Dates and times quoted for Delivery and/or installation of Goods or the provision of Services are estimates only and the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to Deliver or Install or for delay in Delivery of installation or the provision of Services arising from any circumstances of whatsoever nature which are outside the Company's control including but without limiting the generality of the foregoing, fire, flood, explosion, strike, lockout or other industrial act or dispute or the breakdown of or accident to plant and equipment, unavailability or shortage of raw material, labour, power, supplies or transport facilities or act of God or any order or direction of any local State or Federal Government or governmental authority or instrumentality. The Buyer shall not be relieved of any obligation to accept or pay for Goods or Services by reason of any delay in Delivery, despatch or performance. The Company reserves the right to Deliver Goods or provide Services by way of instalments and each instalment shall be deemed to be sold under a separate Sales Contract. Failure to Deliver or provide any instalment shall not entitle the Buyer to rescind or repudiate the Sales Contract.

CANCELLATION: Subject to the prior written approval of the Company which may be withheld in the absolute discretion of the Company, the Buyer's Sales Contract may be cancelled completely or in part provided that a cancellation fee of twenty per centum (20%) of the value of the cancelled Sales Contract (with a minimum fee of \$100) shall be payable by the Buyer to the Company by way of liquidated damages and not by way of penalty and as a genuine pre-estimate of the likely loss resulting from the cancellation of the Sales Contract. Such fee shall become immediately due and payable upon cancellation. The Company will not accept the cancellation or alternation of any Indent Orders or orders to be undertaken by the Company pursuant to the Buyer's own specifications or requirements.

RETURN OF GOODS: Subject to the prior written approval of the Company (which approval may be withheld in the absolute discretion of the Company) pursuant to a Return of Materials Authorisation, the Buyer may return Goods provided that such Goods are resumed (with specific identification of the Goods so as to correspond with details contained on the Return of Materials Authorisation) within seven (7) days from the date of Delivery, the Goods are in the same condition as when originally Delivered to the Buyer, the Buyer pays the Company a restocking fee of not less than twenty per centum (20%) of the Agreed Amount of the Goods (with a minimum fee of \$100) and all freight charges in respect of the resumed Goods have been prepaid by the Buyer. The Company will not accept the return of any indent Order or orders undertaken by the Company pursuant to the Buyer's own specifications or instructions. This clause is to be read subject to any applicable provisions of the Trade Practices Act 1974 and any relevant State legislation.

PACKAGING: All pieces quoted include standard packaging. Any special packaging shall be charged to the Buyer.

QUANTITIES: The Company reserves the right to Deliver Goods to a quantity or percentage more or less than the exact quantity specified. Such variations in quantities shall not exceed five per centum (5%) for Standard Products or ten per centum (10%) for Indent Orders. Without in any way derogating from the above the Company shall not be liable in any way for failure to Deliver the exact number of Goods invoiced unless a written claim for any short Delivery is received by the Company within seven (7) days from the date of initial Delivery.

DEFAULT: If the Buyer defaults in any payment, enters into liquidation, has a receiver appointed to part or all of its assets, enters into voluntary administration or a scheme of arrangement with its creditors or takes or suffers any similar action in consequence of debt or being a natural person or member of the firm which is the Buyer becomes bankrupt or insolvent or enters into any arrangement with his creditors or takes or suffers any similar action in consequence of debt, then all moneys owing by the Buyer to the Company shall notwithstanding that any prior agreed time for payment has not elapsed, become due and payable immediately and the Company may at its option withhold further deliveries or cancel any Sales Contract with the Buyer for the supply of Goods or Services without prejudice to the Company's rights hereunder.

IMPLIED TERMS: All warranties and conditions expressed or implied by statute, common law, equity, trade, custom or usage or otherwise howsoever are to the extent permitted by law expressly excluded from the Sales Contract. The Buyer acknowledges that neither the Company nor any person purporting act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in the Sales Contract whether as to the fitness of the Goods or Services for any particular purpose or any other matter. The Buyer acknowledges that without relying upon the skill or judgement of the Company or any person purporting to act on its behalf, the Buyer has determined that Goods and Services conforming to the contact description will be fit for its purposes. Any description of the Goods or Services used in the Sales Contract is for identification only and shall not constitute a contract of sale by description. The provisions of this clause shall not apply insofar as their application is prevented by the Trade Practices Act 1974 as amended or any other State and Territory laws.

LIMITATION OF LIABILITY: Save as expressly provided for in the following paragraph below, Company shall not be liable to the Buyer or the Buyer's servants, agents or representatives for any direct, indirect, incidental or consequential loss or damage of any nature howsoever caused (whether based on tort including negligence or contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of the Sales Contract and in no event shall any claim be recognised unless the claim is in writing and received by the Company within fourteen (14) days of the date of Delivery.

If the Goods or Services are supplied to the Buyer as a "consumer" of goods and services within the meaning of that term in the Trade Practices Act 1974 or similar State Legislation, the Buyer will have the benefit of certain non-excludable rights and remedies in respect of the Goods and Services and nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Trade Practices Act 1974 or similar legislation is so conferred. However, if the Goods or Services are goods or services not ordinarily acquired for personal, domestic or household use or consumption pursuant to section 68A of the Trade Practices Act 1974 and similar provisions of relevant State legislation, the Company limits its liability to -

- in the case of Goods the replacement of the Goods or the supply of the equivalent Goods or the repair of the Goods; and
- in the case of Services the supplying of the Services again or the payment of the cost of having the Services supplied again.

RETENTION OF TITLE: Title to the Goods is reserved by the Company and shall not pass to the Buyer until all accounts owed by the Buyer to the Company are paid in full. Until title to the Goods has passed to the Buyer -

- the Goods shall be stored on the Buyer's premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the Company's Goods;
- the Buyer must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods;
- the Company may at time to time enter the Buyer's premises (or the premises of any Related Entity or any premises under the control of the Buyer or a Related Entity where the Goods are located) without liability for trespass, negligence or payment of any resulting damages or compensation to the Buyer or anyone claiming through the Buyer whatsoever and use unreasonable force to inspect or take possession of the Goods;
- the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Buyer;
- the Buyer cannot claim any lien over the Goods;
- the Buyer acknowledges that it is in possession of the Goods as bailee for the Company and owes the Company the duties and liabilities of a bailee until such time as the Buyer sells the Goods in the ordinary course of business. If the Goods are re-sold by the Buyer, the Buyer shall keep separate records in relation to the proceeds of sale of all Goods which have been paid for and the Buyer shall hold such part of the proceeds of any such sale as represents the Agreed Amount (plus GST if applicable) of the Goods sold on trust for and as agent for the Company immediately when they are received in a separate identifiable account as the beneficial property of the Company and the Buyer shall pay that amount to the Company upon demand. The Buyer shall not sell any Goods which the Company has demanded the Buyer to return.
- the Buyer shall record the value of the Goods consumed in relation to each unit of finished product in the event the Goods are used in some manufacturing or alteration process or the Goods are mixed with other materials of the Buyer or of some third party and, to the extent that the Goods have not been paid for, the Buyer shall hold such part of the proceeds of such manufacturing, alteration or mixing process as relates to the Goods on trust for the Company and shall remit that amount to the Company on demand;
- the Buyer shall insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business. The Buyer shall hold the proceeds of any insurance claim in respect of the Goods (to the extent of the Buyer's outstanding accounts with the Company) as the beneficial property of the Company and the Buyer shall pay that amount to the Company upon demand; and
- notwithstanding the foregoing the Company shall be entitled to maintain an action against the Buyer for the Agreed Amount (plus GST if applicable).

RISK: Risk in the Goods shall pass to the Buyer upon Delivery.

LIEN: In addition to any lien to which the Company may by statute or otherwise be entitled, the Company shall, in the event of the Buyer failing to pay any outstanding account by the Buyer to the Company or the Buyer entering into any scheme or arrangement with its creditors or going into receivership or liquidation (save for the purpose of reconstruction), be entitled to a general lien on all property of Goods belonging to the Buyer in the Company's possession (although such Goods or some of them have been paid for) for the unpaid price of any other Goods sold and delivered or Services supplied to the Buyer under this or any other contract.

WAIVER: Failure by the Company to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof of any rights the Company may have, and shall not be deemed a waiver of any subsequent breach of any term or condition.

LICENSES AND PERMITS: All Goods are sold and Services performed by the Company on the understanding that all licenses and permits under all relevant statutes, ordinances rules and regulations have been obtained by the Buyer, and that the Buyer will ensure that the installation and use of the Goods and the performance of any Services by the Company and the Buyer shall meet all satisfactory requirements.

PATENTS: The Buyer warrants that any designs, specifications or instructions furnished to the Company shall not be such as will cause the Company to infringe any patent, industrial design, copyright or trademark. The sale and purchase of the Goods shall not confer on the Buyer any license or rights under any patent, industrial design, copyright or trademark the property of the Company.

PERFORMANCE: Any figures or estimates given for performance of Goods or Services are based upon the Company's experience and are such as the Company would expect to obtain on test. The Company will only accept liability for failure to comply with the figures or estimates given when such figures or estimates are guaranteed in writing within specified margins.

SUB-CONTRACTING: The Company reserves the right to sub-contract the manufacture or supply of any part or all of the Goods or Services to be supplied.

GOVERNING LAW: These Terms and Conditions of sale including the Sales Contract evidenced thereby shall in all respects be governed by and construed in accordance with the laws of the State of Victoria and the Company and the Buyer hereby submit to the exclusive jurisdiction of the courts of the State of Victoria Australia and none other.