

### 1. Definitions

- 1.1** In these General Terms and Conditions of sale:
- 1.1.1 'Book Debt' means monies due to you by third parties on account of credit sales of the Products or Value Added Products;
  - 1.1.2 'Metropolitan Area' means the metropolitan area of the city in which we operate;
  - 1.1.3 'Order' means an order placed by you with us for the purchase of Products;
  - 1.1.4 'Products' means any goods or services supplied by us to you (other than machinery or electronic equipment);
  - 1.1.5 'Standard Stock' means:
    - (a) any Product which appears in our price lists; or
    - (b) any Product which is not specific to your requirements only;
  - 1.1.6 'Terms and Conditions' means these General Terms and Conditions;
  - 1.1.7 'Value Added Products' means Products to which you apply, or arrange to be subject to, a Value Adding Process;
  - 1.1.8 'Value Adding Process' means any processing, mixing, or affixing process including printing, gluing, cutting and binding.
  - 1.1.9 'we or us or our' means BJ Ball Pty Ltd and all its subsidiary and associated companies trading under various names, which sell the Products to you;
  - 1.1.10 'you or your' means the purchaser or intended purchaser of the Products;

### 2. Incorporation of General Terms and Conditions

**2.1** These Terms and Conditions apply to the sale of the Products by us to you, and shall be deemed to be incorporated in any agreement between you and us. They supersede and exclude all previous discussions, representations and terms or conditions of dealing between us and you.

### 3. Variation of General Terms and Conditions

**3.1** These Terms and Conditions can only be varied by agreement in writing signed by our authorised representative.

### 4. Offer and Acceptance

**4.1** Each Order by you is subject to acceptance or rejection by us and is not binding on us prior to our written acceptance or performance of it (whichever occurs first).

### 5. Price

**5.1** All prices are quoted or agreed on a tax exclusive basis. The amount of applicable GST and other taxes will be disclosed on invoices. You agree to pay the tax-inclusive price as invoiced.

**5.2** We reserve the right at any time to correct any errors or omissions in any documentation we have issued to you, and to change the price for any reason whatsoever.

**5.3** The price does not include any special packaging costs.

### 6. Delivery

- 6.1** Delivery of the Products is deemed to occur either:
- 6.1.1 when the Products are unloaded or provided at the premises nominated by you, whether or not any person is present to accept the delivery; or
  - 6.1.2 if collected by you, when we notify you that the Products are ready for collection from our premises.
- 6.2** Where the total value of an order of Products is :
- 6.2.1 less than \$550.00; or
  - 6.2.2 outside our normal delivery schedule or delivery methods; or
  - 6.2.3 delivery is outside the hours of 8.00am and 4.30pm, Monday to Friday; or
  - 6.2.4 outside the Metropolitan Area
- all costs of delivery will be borne by you.
- 6.3** Agreed delivery dates and times are approximate only. Delays in delivery are not our liability and do not entitle you to treat any contract between us as repudiated, or to reject the Products.

### 7. Claims

**7.1** Claims will only be considered if made within one month of delivery of the Products.

### 8. Invoicing and Payment

**8.1** We may invoice you for the Products at the time of delivery or at any time after we deliver or attempt to deliver them.

**8.2** Payment in full, without any set-off or deductions, is due within 30 days from our monthly statement.

**8.3** We reserve the right to:

- 8.3.1 require full payment in cash on or prior to delivery; and/or
- 8.3.2 vary the terms or method of payment applicable to your account if we consider that your financial standing so warrants.

**8.4** All payments must be made in Australian currency.

**8.5** If you fail to make full payment within the required time:

- 8.5.1 the entire amount of your outstanding debt will become immediately due and payable to us without any need for us to make written demand for such payment; and
- 8.5.2 we may do any one or more of the following:
  - (a) suspend any further deliveries;
  - (b) charge you interest computed daily and compounded monthly on the outstanding amount at the penalty interest rate of 1.5% per month calculated on a daily basis on the unpaid amount from due date until payment in full;
  - (c) require you to deliver the Products back to us at your cost; and
  - (d) recover all reasonable collection and legal costs.

**8.6** We may inform our professional association of the status of any account at any time.

### 9. Risk

**9.1** Risk in the Products passes to you immediately on delivery, or on invoice for charge and held products.

### 10. Title

**10.1** Title to the Products will not pass from us to you until we receive payment in full, without set-off or deduction, for all Products and for all monies owing by you to us on any account whatever.

**10.2** Until title to the Products passes to you in accordance with paragraph 10.1:

- 10.2.1 you hold the Products as our bailee and fiduciary agent;
- 10.2.2 where permitted by the nature of the Products and unless the Products have become Value Added Products, you will store the Products on your premises separately from your own or any other person's goods so that they are identifiable as our Products;
- 10.2.3 you may use the Products in, or subject them to, any Value Adding Process;
- 10.2.4 you may only sell the Products in the ordinary course of your business and in accordance with subclauses 10.1 to 10.5.
- 10.2.5 you sell the Products and Value Added Products as fiduciary agent of us. You acknowledge and agree that such sales do not give rise to any liability or obligations on the part of us in contract or otherwise.
- 10.2.6 you hold on trust for us that portion of the proceeds of sale of the Products or Value Added Products equal to the price of the Products (including GST) as invoiced by us to you.
- 10.2.7 you must hold the proceeds referred to in subclause 10.2.6 in a separate account that clearly identifies the proceeds as money held on trust for us.

**10.3** The provisions in subclause 10.2 also apply if you sell any of the Products or Value Added Products on credit (whether partially or fully) in the ordinary course of your business, before title to the relevant Products passes to you in accordance with subclause 10.1.

**10.4** Until title to the Products passes to you in accordance with

subclause 10.1 or otherwise, we have the following rights in addition to those set out in the other provisions of subclauses 10.1 to 10.5:

- 10.4.1 we are entitled at any time to demand the return of the Products; and
  - 10.4.2 we are entitled, on reasonable notice to you, to enter your premises or any premises on which we reasonably suspect the Products are held to search for and remove the Products and you authorise us or our agents to enter any such premises for such purpose.
  - 10.4.3 we are entitled, from time to time, to enter your premises to inspect, copy or take extracts from the books, records and files of any kind relating to the sale of the Products, the identification of sale proceeds in respect of the Products, the identification of the Book Debts. You acknowledge and agree that:
    - (a) you will keep your books, records and files of any kind available for inspection by us at your principal place of business; and
    - (b) any failure by us to exercise any right under this subclause 10.4 or any other right is not a waiver of any of our rights, including without limitation those rights that arise under this clause 10.
- 10.5 Pending payment of all monies owing, your right to sell the Products in the ordinary course of your business will immediately cease on the happening of any of the following events:
- 10.5.1 you cease to be able to pay your debts as and when they fall due;
  - 10.5.2 you commit an act of bankruptcy or have a controller or trustee appointed in respect of your estate or any part of your assets;
  - 10.5.3 execution is levied against any of your possessions;
  - 10.5.4 a resolution is passed for, an application is made for, or you are placed in, liquidation, whether voluntary or otherwise;
  - 10.5.5 your act or omission would entitle a receiver to take possession of any assets, or would entitle an external administrator to be appointed to you;
  - 10.5.6 you commit a material breach of any of these Terms and Conditions or any other agreement between you and us;
  - 10.5.7 you purport to enter into a forward sale contract in respect of the Products or Value Added Products or purport to assign or factor the Book Debts without our prior written consent, which consent may be withheld in our absolute discretion; or
  - 10.5.8 we give notice to you terminating your right to sell the Products in the ordinary course of business.

## 11. Indent Sales

- 11.1 Where we arrange for the Products to be supplied to you by a third party supplier ("Supplier") the following terms and conditions apply:
- 11.1.1 All orders are accepted subject to us being able to arrange supply of the Products;
  - 11.1.2 Where we arrange for the Products to be imported into Australia and they are supplied direct to you or held at premises controlled by you or your agent:
    - (a) the price conversions from overseas currency to Australian currency will be at the rate of exchange quoted in the original order confirmation;
    - (b) you will be responsible (at your cost) for obtaining any licences and approvals necessary to import the Products;
    - (c) the provisions of the Incoterms 2000 are deemed to be included in and form part of the contract except to the extent that any such provisions are inconsistent with these Terms and Conditions;
    - (d) where the term "net delivered" is used it shall have the meaning equivalent to the incoterm "Delivered Duty Paid – Buyer's Premises" but it shall be your responsibility in any such contract to arrange for the Products to be unloaded and you shall bear all risks associated with such delivery;
    - (e) except in the case of Products sold at net delivered prices, all bank charges and other clearing costs will be met by you; and
    - (f) where the basis of sale is net delivered, payment is due by the end of the month following the date on which the Products are delivered to you or collected by you. In all other cases, the Products will be invoiced on the date of the bill of lading and payment is due at the time specified on the sale note.

- 11.1.3 You acknowledge that the Products referred to in any particular Order will be subject to certain conditions of sale imposed by the Supplier. Because of this you accept that there may be certain variations in quantities supplied, thickness, sheet size, and reel dimensions within certain tolerances generally accepted within the paper industry.
- 11.1.4 We accept no liability for, and you agree to indemnify us from, any Claim arising where a Supplier refuses to accept an Order or does not fulfill an Order or for any cause whatsoever beyond our reasonable control.

## 12. Personal Property Securities Act 2009 (Cth) ("PPSA")

- 12.1 You acknowledge that:
- 12.1.1 each Order accepted by us is an Order accepted under these Terms and Conditions and constitute a security interest and to the extent applicable a purchase money security interest for the purposes of the PPSA enabling us to register a financing statement under the PPSA with respect to the security interest; and
  - 12.1.2 a security interest and where applicable a purchase money security interest securing the performance of your obligations under these Terms and Conditions is taken in all Products previously supplied by us to you (if any), and all Products that may be supplied in the future by us to you, and the proceeds of sale of Products and Value Added Products.
- 12.2 You must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Products (including any replacement part or other item that is incorporated into any Product), in your possession or control prior to title to the Products passing to you other than a security interest arising under these Terms and Conditions.
- 12.3 You must assist us to complete the registration of any financing statement in respect of the Products, and will do all things and provide all information necessary to enable us to perfect our security interest in the Products and complete any financing change statement
- 12.4 To the extent permitted by law, you irrevocably waive any rights you may have to receive notices under ss 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA, redeem the Products following seizure by us under s142 or to reinstate a security agreement following termination under s143.
- 12.5 You agree that you irrevocably waive any rights you may have to receive a verification statement (as defined in the PPSA).

## 13. Return of Standard Stock

- 13.1 In addition to your rights in respect of defective or non-conforming Products, you may return Products where all of the following circumstances apply:
- 13.1.1 we have agreed in writing in advance;
  - 13.1.2 the Products are, in our opinion in good saleable condition;
  - 13.1.3 the Products remain in the original undamaged packaging as supplied to you by us;
  - 13.1.4 the Products are Standard Stock, and not custom made in accordance with your particular requirements or imported from overseas at your request;
  - 13.1.5 the Products are returned within 7 days following delivery; and
  - 13.1.6 you are liable for the delivery and insurance costs incurred in respect of any Products returned to us.

## 14. Customer Acknowledgments

- 14.1 You acknowledge that the Products are not sold pursuant to a sale by description or a sale by sample. Any description of the Products on any of our documents is given by way of identification only.
- 14.2 To the extent permitted by law, you acknowledge that:
- 14.2.1 you are relying on your own skill and judgement in relation to your selection of the Products; and
  - 14.2.2 you have not advised us of the intended purpose for the Products and we have not advised you of the suitability of the Products for any purpose, including the suitability of self-adhesive materials purchased by you.

## 15. Customer Warranties and Indemnity

- 15.1 You warrant to us that:
- 15.1.1 you possess the relevant knowledge and all necessary licences, permits or approvals to receive, handle and store the Products; and

15.1.2 you will comply with all laws and the conditions of any licences, permits or approvals relating to the handling and storage of the Products.

**15.2** To the extent permitted by law, you indemnify us against all losses, damages or costs (whether incurred by or awarded against us) that we may incur as a result, whether directly or indirectly, of:

15.2.1 your use, sale and/or handling of the Products;

15.2.2 any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct by you or your officers, agents or employees in relation to the Products;

15.2.3 any claim that your use of the Products infringes the intellectual property rights of any person and/or entity; or

15.2.4 repossessing the Products or enforcing any rights we have against you under clauses 10 and/or 12 or at law, including without limitation, any claims from parties whose property has been incorporated into the Products.

## **16. Warranties and Liabilities**

**16.1** We exclude all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('Non-excludable Condition').

**16.2** To the extent permitted by law, our liability for breach of a Non-excludable Condition is limited, at our option, to refunding the price of the Products or to replacing or repairing those Products and/or providing those Products again. Except for liability for breach of any Non-excludable Condition and to the extent permitted by law:

16.2.1 we exclude liability for loss of profits or consequential or indirect loss or damage; and

16.2.2 our total liability to you is limited to the amount paid or payable by you to us for those Products.

## **17. Sub-contracting**

**17.1** We may sub-contract the production, manufacture, supply or delivery of all or some of the Products.

## **18. Containers & Pallets**

**18.1** Any containers or pallets owned by us used for delivery of the Products remain our property, and may not be used by you other than for storage of the Products delivered.

**18.2** Any deposit fees paid are refundable only after the containers and pallets are returned in good order and condition. Any costs incurred by us in the repair of containers or pallets will be borne by you.

**18.3** On delivery of the Products, any pallets hired by us from a third party will be transferred to your account with the relevant hire company.

## **19. Force Majeure**

**19.1** We will not be liable for any failure to perform or delay in performing our obligations under these Terms and Conditions if that failure or delay is due to anything beyond our control.

## **20. Waiver**

**20.1** Failure by us to insist on strict compliance with any of these Terms and Conditions or any delay by us in exercising our rights under any contract between us and you will not constitute a variation or waiver of any provision of this contract or of any right available to us.

## **21. Governing Law**

**21.1** These Terms and Conditions are governed by the law applicable in the place where your Order is to be performed.

## **22. General**

**22.1** References to weights, quantities or other measures are within a variance of plus or minus 5%.

**22.2** If part or all of any provision of these Terms and Conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from these Terms and Conditions and the remaining provisions continue in force.