

Terms & Conditions of Sale

All Orders given to Specialty Balloon Printers PTY LTD - Australia ABN No 84 605 813 787 (**SBPA**) are subject to the following terms and conditions.

1. Defined meanings

The definitions and interpretation rules that apply to this document are set out in clause 15.

2. Orders

- 2.1 Each Order will constitute an offer by the Customer to acquire Goods from SBPA subject to this document. Any price lists or quotations given by SBPA to a Customer are an invitation to the Customer to place an Order only.
- 2.2 A contract will only be made between SBPA and the Customer for the sale and purchase of Goods if and upon the acceptance of the Order by SBPA by the provision to the Customer of an Order Confirmation.
- 2.3 An Order may only be made by the Customer to SBPA:
 - (a) in writing, by facsimile transmission or by email;
 - (b) by telephone, if within 3 Business Days of the placement of the Order, it is confirmed by a method specified in clause 2.3(a).
 - (c) The Contract resulting from the provision of the Order Confirmation cannot be cancelled by the Customer without SBPA's written consent and SBPA may at its discretion impose a reasonable cancellation charge.

3. Payment

- 3.1 The Customer agrees to pay to SBPA the Price in full prior to production and delivery of the Goods, unless the Customer has completed and returned a Credit Application Form and SBPA has agreed to extend credit to the Customer, in which case the Customer agrees to pay the Price in full on or before the expiry of seven days from the date of delivery of the Goods or as otherwise agreed with SBPA.
- 3.2 If the Price is not paid in full as and when due in accordance with clause 3.1, then SBPA may charge interest at a rate of 1.25% per month from the due date to the date that the account is paid in full.
- 3.3 If SBPA agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as terms and conditions of the Contract.

4. Title and risk

- 4.1 The Customer acknowledges and agrees that no title to the Goods shall pass to the Customer until the Price has been paid to SBPA in full.
- 4.2 Risk in the Goods will pass to the Customer at Delivery Time.

5. Deliveries

- 5.1 The Delivery Time shall be a time or during a period agreed by SBPA and the Customer.
- 5.2 SBPA reserves the right to withdraw an Order Confirmation at any time before the Delivery Time and will not be liable for any Loss whatsoever arising from its failure to deliver any or all of the Goods.
- 5.3 Any term of the Contract relating to the quantity of Goods is not the essence of the Contract. SBPA reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately and the Customer cannot reject Goods on the basis of partial delivery.
- 5.4 Where Goods remain in the possession of SBPA after the Delivery Time (including where the Customer fails for whatever reason to take delivery of the Goods), SBPA is entitled to charge the Customer for all Loss occasioned by the Customer not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.
- 5.5 Unless otherwise agreed by SBPA, all Goods will be delivered to the Delivery Address.
- 5.6 The Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

6. Inspection, acceptance of goods and customers obligations

- 6.1 The Customer must inspect the Goods within 2 Business Days of the Delivery Time and if no inspection is so made, is deemed to have accepted the Goods.
- 6.2 The Customer has no claim for shortages, defects or any Loss in respect of Goods apparent on inspection unless:
- (a) a complaint is made to SBPA within 3 Business Days of the Delivery Time specifying the shortage or defect; and
 - (b) SBPA is, after receipt of the complaint, permitted to inspect the Goods and investigate the complaint.
- 6.3 If a complaint is not made to SBPA in accordance with clause 6.2, the Goods delivered will be deemed to be in accordance with the Contract, and SBPA will not be liable for any Losses regarding the use or application of the Goods, and the Customer Is bound to pay for them accordingly.
- 6.4 SBPA will only accept the return of Goods from the Customer where:
- (a) The Customer has complied with clause 6.2 and SBPA is satisfied as to the claim by the Customer; and
 - (b) The Goods are returned to SBPA in the same condition as when first delivered to the Customer.
- 6.5 If the Customer does not return Goods using SBPA's carrier, the Customer must bear the freight costs.
- 6.6 Where incorrect Goods are Ordered, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Customer's requirements, an incorrect account number is used, or an Order is duplicated, the Customer may after receiving written authority from SBPA, return the Goods to SBPA subject to the Goods being returned in the same condition as when first delivered to the Customer and subject to the Customer bearing the freight costs of the delivery and return of the Goods.
- 6.7 Where Goods are returned to SBPA in accordance with the above provisions SBPA must issue a credit note in respect of any amounts paid by the Customer In respect of those Goods.

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

- 7.1 This document is a security agreement.
- 7.2 The interest of SBPA in the goods and all proceeds from the sale of the goods by the Customer to a third party is a security interest.
- 7.3 The Customer consents to SBPA registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by SBPA to facilitate registration.
- 7.4 Until such time as title in the goods has passed to the Customer as contemplated by clause 3.6, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the goods in such a manner as to create a security interest over the goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the goods in the ordinary course of business.
- 7.5 The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 7.6 Unless the goods are used predominantly for personal, domestic or household purposes, SBPA and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of SBPA's security interest in the goods or of this document:
- (a) Any requirement for SBPA to give the Customer a notice of removal of accession.
 - (b) Any requirement for SBPA to give the Customer a notice of SBPA's proposed disposal of the goods.
 - (c) Any requirement for SBPA to include in a statement of account, after disposal of the goods, the details of any amounts paid to other secured parties.
 - (d) Any requirement for SBPA to give the Customer a statement of account if SBPA does not dispose of the goods;
 - (e) Any right the Customer has to redeem the goods before SBPA exercises a right of disposal;
 - (f) Any right the Customer has to reinstate this document before SBPA exercises a right of disposal of the goods.
- 7.7 Expressions defined in the PPSA have the same meaning when used in this document.

8. Liability

- 8.1 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, SBPA's liability for breach of any term implied into this document by any law is excluded.
- 8.2 All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- 8.3 SBPA gives no warranty in relation to the Services provided or supplied. Under no circumstances is SBPA or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods or Services supplied to the Customer;
 - (b) any delay in supply of the Goods or Services; or
 - (c) any failure to supply the Goods or Services.
- 8.4 Any advice, recommendation, information, assistance or service given by SBPA in relation to Goods or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. SBPA will not be liable for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- 8.5 To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or Services, whether based on breach of contract, negligence, strict liability or otherwise, even if SBPA has been advised of the possibility of damages.
- 8.6 The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.
- 8.7 The Australian Consumer Law may give the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, SBPA's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- 8.8 The total liability of SBPA for loss or damage of every kind:
- (a) whether arising pursuant to this agreement; or
 - (b) out of or in relation to the goods, their sale, delivery or the way they behave, in tort or contract or in any other cause of action; or in any other way whatsoever,

is limited to:

- (c) the amount paid by the Customer to SBPA under this document at the date when such liability arises; or
- (d) if this agreement has been in place for more than one year, the amount paid by the Customer to SBPA over the previous one year period,

subject to any statutory rights of the buyer (including under the Australian Consumer Law) that cannot be excluded by contract.

9. Intellectual Property Rights

- 9.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise SBPA to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to SBPA for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified SBPA against all Losses incurred by SBPA in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- 9.2 Unless specifically agreed in writing between SBPA and the Customer, all Intellectual Property Rights in any works created by SBPA on behalf of the Customer vest in and remain the property of SBPA.
- 9.3 Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by SBPA in connection with the provision of Goods or Services under this document for the purposes contemplated by the Order.

10. Indemnity

The Customer indemnifies and keeps indemnified SBPA, its servants and agents in respect of:

- (a) any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against SBPA or, for which SBPA is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of this document including, but not limited to any legal costs incurred by SBPA in relation to meeting any claim or demand or any party-party legal costs for which SBPA is liable in connection with any such claim or demand. This clause survives termination of this document;
- (b) any costs (including legal costs on a full indemnity basis) incurred by SBPA in enforcing (or attempting to enforce) its rights under this document.

11. Default by Customer

11.1 Each of the following occurrences constitutes an event of default:

- (a) the Customer breaches or is alleged to have breached this document for any reason (including, but not limited to, defaulting on any payment due under this document) and fails to remedy that breach within 14 days of being given notice by SBPA to do so;
- (b) the Customer, being a natural person, commits an act of bankruptcy;
- (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or any part of the Customer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (iv) any assignment for the benefit of creditors;
- (d) the Customer purports to assign its rights under these Terms of Trade without SBPA's prior written consent;
- (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.

11.2 Where an event of default occurs, except where payment in full has been received by SBPA, the SBPA may:

- (a) terminate this document;
- (b) terminate any or all Orders and credit arrangements (if any) with the Customer;
- (c) refuse to deliver Goods or provide further Services;
- (d) repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
- (e) retain (where applicable) all money paid on account of Goods or Services or otherwise.

11.3 In addition to any action permitted to be taken by SBPA under paragraph 11.2, on the occurrence of an event of default all invoices will become immediately due and payable.

12. Termination

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 30 days written notice to the other party.

13. GST

13.1 Interpretation

Except where the context suggests otherwise, words and expressions in this clause 10 have the meanings given to them by the GST Act.

13.2 Amounts exclude GST

Unless otherwise expressly stated, all amounts stated to be payable under this document exclude GST.

13.3 Additional amount for GST

- (a) If GST is imposed on any supply made under or in accordance with this document, then any party (**Recipient**) required to provide consideration to another party (**Supplier**) for that supply will pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply.
Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the Supplier giving a tax invoice to the Recipient.

- (b) If this document requires a party to pay for, reimburse or contribute to any expense, loss, indemnity or outgoing **(Reimbursable Expense)** suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
 - (i) the amount of the Reimbursable Expense less the input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense; and
 - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

14. Overseas orders

- 14.1 This clause 14 will apply if SBPA, pursuant to this document, delivers Goods outside of Australia.
- 14.2 In this clause, Tax includes any tax, levy, duty, charge, excise, impost, fee, deduction or withholding however it is described, that is assessed, levied, collected or imposed by law or by a government agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of foregoing.
- 14.3 The Price of the Goods will not include, and the Customer is to pay:
 - (a) any Taxes, customs charges or the like; or
 - (b) any port charges, freight costs or the like,unless otherwise specified in the relevant Order Confirmation.

15. General

- (a) **(Amendments)** This document may only be varied by a further written agreement signed by or on behalf of each of the parties.
- (b) **(Assignment)** The Customer cannot assign, novate or otherwise transfer any of its rights or obligations under this document without the prior written consent of SBPA.
- (c) **(Attorneys)** Each person who executes this document on behalf of a party under a power of attorney declares that he is not aware of any fact or circumstance that might affect his authority to do so under that power of attorney.
- (d) **(Consents)** Unless this document expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this document. To be effective, any consent under this document is to be in writing.
- (e) **(Costs)** Each party will pay their respective costs and expenses in connection with the negotiation, preparation, execution, and performance of this document.
- (f) **(Counterparts)** This document may be executed, in original form or by facsimile transmission, and in any number of counterparts each of which will be considered to constitute the same instrument.
- (g) **(Entire agreement)** This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (h) **(Force majeure):**
 - (i) If circumstances beyond SBPA's control prevent or hinder its provision of the Goods or Services, SBPA is free from any obligation to provide the Goods or Services while those circumstances continue. SBPA may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
 - (ii) Circumstances beyond SBPA's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.
- (i) **(Further acts)** Each party will promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this document.
- (j) **(Jurisdiction)** This document is governed by the law in force in Brisbane, Queensland, Australia (Jurisdiction). Each party submits to the exclusive jurisdiction of the courts of the Jurisdiction and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this document. Each party irrevocably waives any objection it may have now or in the future to the venue of any proceedings where that venue falls within the Jurisdiction.
- (k) **(No merger)** No right or obligation of any party will merge on completion of any transaction contemplated by this document.

- (l) **(Notices)** Any notice given under this document:
 - (i) is to be in legible writing and in English;
 - (ii) is to be addressed to a party as shown in the schedule;
 - (iii) is to be signed by the party giving the notice or (on its behalf) by the solicitor for, or by any solicitor, director, secretary, or authorised agent of, that party;
 - (iv) is to be:
 - (A) delivered to that person's address;
 - (B) sent by pre-paid mail to that person's address;
 - (C) transmitted by facsimile to that person's address; or
 - (D) sent by email to that person's email address; and
 - (v) will be deemed to be received by the addressee:
 - (A) if delivered by hand, at the time of delivery;
 - (B) if sent by post, on the third Business Day after the day on which it is posted, the first Business Day being the day of posting;
 - (C) if sent by facsimile, on the Business Day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received;
 - (D) if sent by email, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).
- (m) **(Severability)** Any provision of this document that is illegal, void or unenforceable is to be severed without prejudice to the balance of the provisions of this document which will remain in force.
- (n) **(Waiver):**
 - (i) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this document.
 - (ii) Any waiver or consent given by any party under this document will only be effective and binding on that party if it is given or confirmed in writing by that party.
 - (iii) No waiver of a breach of any term of this document will operate as a waiver of another breach of that term or of a breach of any other term of this document.

16. Definitions and interpretation

16.1 Definitions

In this document:

- (a) **Business Day** means a day, not being a Saturday, Sunday or gazetted public holiday, on which banks are open for business in Brisbane, Queensland, Australia.
- (b) **Contract** means the contract resulting from the acceptance by SBPA of an Order in accordance with clause 2.2.
- (c) **Credit Application Form** means SBPA's credit application form by which a Customer can apply for credit account with SBPA in respect of the sale of Goods.
- (d) **Customer** means the person identified on a quote or Order as the customer and includes the Customer's agents and permitted assigns.
- (e) **Delivery Address** means the delivery address of the Customer stated in an Order.
- (f) **Delivery Time** means the time of delivery of the Goods either to the Delivery Address of the Customer or to the carrier of the Customer.
- (g) **Goods** mean any goods supplied by SBPA to the Customer, including those supplied in the course of providing Services.
- (h) **GST** means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (i) **Intellectual Property Rights** mean intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

- (j) **Loss** includes costs (including party to party legal costs and the SBPA's legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- (k) **Order Confirmation** means a written confirmation of the Order by SBPA, which may be in the form of an invoice provided to the Customer by facsimile transmission or email or delivered to the Customer upon delivery of the Goods.
- (l) **Order** means a purchase order for Goods or Services placed by a Customer in response to a quote and as varied in writing from time to time by the parties.
- (m) **Price** means the price for the Goods specified in the Order Confirmation;
- (n) **Services** mean the services to be provided by SBPA to the Customer in accordance with a quote and this document.

16.2 Interpretation

- (a) Clause and subclause headings are for reference purposes only.
- (b) The singular includes the plural and vice versa.
- (c) Words denoting any gender include all genders.
- (d) Reference to a person includes any other entity recognised by law and vice versa.
- (e) Where a word or phrase is defined its other grammatical forms have a corresponding meaning.
- (f) Any reference to a party to this document includes its successors and permitted assigns.
- (g) Any reference to any agreement or document includes that agreement or document as amended at any time.
- (h) The use of the word includes or including is not to be taken as limiting the meaning of the words preceding it.
- (i) The expression at any time includes reference to past, present and future time and the performance of any action from time to time.
- (j) An agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (k) An agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally.
- (l) A reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- (m) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.
- (n) If a day on or by which an obligation is to be performed or an event is to occur is not a Business Day, the obligation is to be performed or the event is to occur on or by the next Business Day.
- (o) A reference to A\$, \$A, dollar or \$ is to Australian currency.
- (p) A reference to time is to time in Brisbane, Queensland, Australia.
- (q) A reference to a clause, schedule or annexure is to a clause of, or schedule of, or annexure to this document, and a reference to this document includes any schedule or annexure.