

# THRIVING ENTERPRISES PTY LTD

## Term and conditions of trade

### Definitions

In these conditions:

**"Agreement"** means any order place by the customer to Thriving Enterprises Pty Ltd and the quotation/s against this order together will become agreement;

**"Customer"** means a company, firm or corporation, jointly, and severally if there is more than one, acquiring goods from the Supplier;

**"goods"** means goods supplied by the Supplier to the Customer;

**"GST"** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

**"Supplier"** means Thriving Enterprises Pty Ltd (ABN 71 050 835 231)

**"Terms"** means these Terms and Conditions of Trade.

### 2. Basis of Agreement

2.1 Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every contract for the sale of goods by the Supplier to the Customer and cannot be varied or supplanted by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by the Supplier to the Customer concerning the proposed supply of goods is bound by the following conditions:

(a) The cylinder costs is for surface engraving & processing, not for the cylinders as such. Cylinders left unused for a 12 month period will be stripped and returned to stock.

(b) Quotation is valid for 30 days unless otherwise stated on the quotation.

(c) Where die-lines are requested, a nominal fee of \$350.00 per drawing/variety will be incurred. More complex drawings will attract a higher cost. When the project makes the transition from inquiry to official order, die-line drawing costs will be noted and deducted from the supplied goods invoice.

(d) We apply great care and attention in producing our products. Customers are responsible to ensure our packaging meets their full expectations. Supplier's liability is limited to the repair or replacement of goods, and not liable for any injury, damage or economic loss.

2.3 The Terms may include additional terms in the Supplier's quotation, which are not inconsistent with the Terms.

2.4 The quotation is accepted by the customer when the customer provides a signed purchase order.

2.5 The Supplier in its absolute discretion may refuse to accept any offer.

2.6 It is the Customer's responsibility to provide the Supplier with its specific requirements in relation to the goods.

2.7 The Supplier may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

### 3. Pricing

3.1 Prices quoted for the supply of goods exclude GST and any other taxes or duties imposed on or in relation to the goods. In addition to payment of the price of goods, the Customer must pay any GST and any other taxes or duties imposed on the goods.

3.2 Where there is any change in the costs incurred by the Supplier in relation to goods, the Supplier may vary its price for the goods to take account of any such change, by notifying the Customer.

### 4. Payment

4.1 The Supplier reserves the right to require payment in full on delivery of the goods.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have been cleared.

4.3 Payment terms may be revoked or amended at the sole discretion of the Supplier immediately upon giving written notice to the Customer.

4.4 The time for payment shall be of the essence in any Agreement.

### 5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;

(c) cease or suspend for such period as the Supplier thinks fit; supply of any further goods to the Customer by notice in writing to the Customer; terminate any contract with the Customer so far as unperformed by the Supplier without effect on the accrued rights of the Supplier under any contract.

5.2 Clauses 5.1(c) may also be relied upon, at the option of the Supplier:

(a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

### 6. Risk and Insurance

6.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being delivered or taken from the Supplier's premises by the Customer's authorized agent.

6.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

6.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by the Supplier, whether such goods are used singularly, or in combination with other substances, or any process.

### 7. Performance of Agreement

7.1 Any period or date for delivery of goods stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its reasonable endeavors to meet any estimated dates for delivery of the goods but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

7.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

7.3

### 8. Liability

8.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

8.2 Replacement or repair of the goods is the absolute limit of the Supplier's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.

8.3 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

8.4 The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to deliver goods or fails to meet any delivery date or cancels or suspends the supply of goods.

8.5 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or their use or application.

(b) it has the sole responsibility of satisfying itself that the goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Supplier.

(c) any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

8.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

### 9. Cancellation

9.1 If, through circumstances beyond the control of the Supplier, the Supplier is unable to effect delivery or provision of goods, then the Supplier may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

9.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier after that order has been accepted.

9.3 The Supplier, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

### 10. Returns and Exchanges

10.1 Subject to clause 10.2, the Supplier will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies the Supplier with full details, within 5 days of delivery.

10.2 When any defects, shortages, claim for damage or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the goods, or refund the price of the goods.

10.3 If the Customer fails to give the notice as required in clause 10.1, it is deemed to have accepted the goods.

10.4 The Supplier will not under any circumstances accept goods for return that:

(a) have been specifically produced, imported or acquired to fulfill any contract;

(b) have been altered in any way;

(c) have been used; or

(d) are not in their original condition and packaging.

### 11. Force Majeure

11.1 The Supplier shall have no liability whatsoever under or in any way related to the sale and purchase of the goods or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfillment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. Should an event of force majeure occur, the Supplier may terminate the Agreement by written notice to the Customer.

### 12. Miscellaneous

12.1 Failure by the Supplier to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.

12.2 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

12.3 A notice must be in writing and handed personally or sent by facsimile email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile and email are deemed received on the facsimile machine confirming transmission.

### 13. Privacy

13.1 The Supplier is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to the Supplier in accordance with the *Privacy Act*.

13.2 The Supplier requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by the Supplier in connection with this Agreement.