



## Terms and Conditions of Supply – Adhesif Labels PTY Limited

### 1. APPLICATION

**1.1 Currency:** These Terms and Conditions apply to the supply of all goods and services by us to you as our customer, subject to clauses 1.2 and 1.3, from the date set out below.

**1.2 New Terms and Conditions:** New Terms and Conditions for the supply of goods and/or services may be adopted by us from time to time. You will be given notice of such new Terms and Conditions if you are at the relevant time an existing customer. Such new Terms and Conditions will apply to contracts for the supply of goods and/or services to you by us and any Orders or Quotations made, in each case, after the effective date of the new Terms and Conditions.

**1.3 Variation of Terms and Conditions:** We may, by not less than 7 day's prior notice in writing to you, amend these Terms and Conditions as regards the supply of goods and/or services with you under then existing contracts provided always that, in respect of a then existing consumer contract (as defined by section 23(3) of Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), any amended terms or conditions shall be void to the extent they are unfair within the meaning of section 24 of that Schedule.

### 2. QUOTATIONS AND ORDERS

**2.1 Request for Quotation:** As a customer you may request a Quotation from us setting out the price and quantity of Labels proposed to be supplied.

**2.2 Provision of Quotation:** We may provide a Quotation to you concerning the supply of Labels, including such express terms as we may require in the circumstances.

**2.3 Acceptance of Quotation:** If the Quotation is acceptable to you, you may place an Order as required by clause 2.4.

**2.4 Placing of Order:** You will complete an Order and send it to us for each supply of goods and/or services. If you have not previously provided us with a signed copy of these Terms and Conditions or some other form of acknowledgement (acceptable to us) confirming that you agree to be bound by them, you must forward a signed copy of these Terms and Conditions with the Order. In any event, the making of an Order by you shall be deemed to be acceptance by you of

these Terms and Conditions.

**2.5 Customer Conditions:** We will not be bound by any conditions included in an Order unless we expressly accept such conditions or any of them (in which case only to that extent) in writing. We may commence production of an Order without notice to you refuting your purported conditions of supply. Without prejudice to the foregoing, the acceptance of delivery of any part of an Order by you will be deemed to be acceptance of these Terms and Conditions for the Order in question excluding the purported conditions inserted by you or on your behalf notwithstanding anything that may be stated to the contrary in any enquiries or in an Order.

**2.6 Delay in Acceptance:** If an Order is not placed with us within 30 days of the date of a Quotation, the Quotation is subject to further written confirmation by us (which may be given or refused in our absolute discretion). Prices quoted are for the quantity of Labels requested. We may in our absolute discretion vary the price if the quantity in an Order is different from that contained in the relevant Quotation.

### 3. VARIATIONS AND ALTERATIONS

**3.1 Variation in Price:** Quotations are based on the cost prevailing and specification supplied at the time of quoting. The quoted price shall be subject to amendment if there is any movement in costs or there is any variation or alteration from the specification supplied.

### 4. PROGRESS PAYMENTS

**4.1 Progress Payments:** We may issue an invoice for the amount of the Quotation, or part of it, before commencing the Order; and require payment of that invoice before commencing production of the Order, or completing more than such portion of the Order as we in our sole discretion determine.

### 5. SUSPENSION OF ORDER

**5.1 Payment:** If, as a consequence of an instruction from a customer, we delay or suspend any Order (or part of it) for a period of 14 days or more, we shall be entitled to payment in full for all work in progress at the time of suspension and may alter the price for the uncompleted portion of the Order.

### 6. ESTIMATES

**6.1 Estimates:** In some circumstances we may provide an Estimate for Labels or services associated with Labels, including (but not limited to goods and services provided by third parties). In such cases you shall pay the sums invoiced by us for the goods and services and Labels provided, notwithstanding that the invoiced sum may differ from the quantum of the Estimate.

**6.2 Estimates included in Quotations;** A Quotation may include an Estimate for part of the costs included; typically for costs such as plates, proofs, dies, die line, and other origination costs.

### 7. ORDERS IN WRITING

**7.1 No Liability for Verbal Instructions:** All Orders and instructions to us must be provided in writing. We shall not be liable for errors or omissions arising from an oversight or misinterpretation of verbal instructions where these are acted upon.

### 8. INTELLECTUAL PROPERTY

**8.1 Material provided by Customers:** If you provide us with logos, designs, or copy for the design and/or manufacture of Labels, you warrant, and represent to us that the logos design and copy and any Labels manufactured based on the logos design and copy will not infringe the copyright, trademark, or other intellectual property rights of any third party, and you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with such representation or warranty being untrue or breached.

**8.2 Licence:** You grant to us a non-exclusive royalty free license throughout the Universe to use all intellectual property rights in all logos, designs and copy for so long as necessary or convenient for the production of the Labels and the matters contemplated in relation to the delivery of the relevant goods and/or services.

**8.3 Intellectual Property of Adhesif:** All intellectual property rights in and relating to the production of the Labels (excluding intellectual property in the logos, designs, or copy belonging to the Customer which is licensed to us pursuant to clause 10.2) including patents, trademarks, copyright, know how, designs, trade secrets and

information confidential to Adhesif and any amendments to intellectual property rights will remain the property of Adhesif and will not be disclosed to any other person by the you without our prior written consent.

**8.4 Confidentiality:** You must keep confidential and not use any ideas communicated by us to you without our prior written consent.

**8.5 Electronic Images and/or Files:** It is your responsibility to retain a copy of any image or file supplied. We are not responsible for accidental damage to any image or file supplied to us by you and we assume no duty of care to you.

**8.6 Storage of Electronic Data:** We will not be responsible for storing any data on disks, tapes, compact disks or other media when an Order has been completed. If we agree to store such data we may charge to do so [at our applicable rates from time to time?] but we will have no liability to you as a consequence of that data being lost or destroyed.

**8.7 Additional Work:** We are entitled to make an additional charge for any additional translating, editing, or programming needed to utilise files or images supplied by a customer at our applicable rates.

**8.8 Property of Adhesif:** Unless otherwise agreed in writing, a customer shall have no right to material stored by us on disks, tapes, or any other form of electronic storage, but if we agree to duplicate or transfer stored electronic material to a customer we shall have the right to charge for this service at our applicable rates. Disks, tapes and any other form of electronic storage supplied by a customer shall remain the property of the customer and unless otherwise instructed in writing we shall assume that these are a copy of the original.

**8.9 Printing Plates:** Any printing plates or other items commissioned by us shall remain the property of Adhesif notwithstanding that the cost of those plates has been charged to or is payable by the customer.

**8.10 Ancillary Materials:** Unless we agree with a customer otherwise in writing, drawings, sketches, painting, photographs, designs, typesetting, dummies, models, negatives, positives, electronic artwork, flexible dies, rotary dies, silkscreens and proprietary files, plates or cylinders, disks, tapes, compact disks, or other media or data and other material produced by us in the course of or in preparation for performing an Order (whether or not it is in fact used for the purposes of performing the Order) are our property and all intellectual property rights in those medias (but excluding the intellectual property rights in the customer's design) is and shall

remain our property.

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## 9. PRICE

**9.1 Currency:** Unless otherwise agreed in writing, the price for the Labels is stated in Australian dollars and will be the current price charged by us at the date of delivery.

**9.2 GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of Goods and Services Tax (GST). Any other taxes, duties, charges and delivery and packaging costs are payable in addition.

**9.3** You must pay all GST in addition to all other sums payable by you to us. The amount of GST payable by you will be calculated by multiplying the sum payable for the supply by the relevant GST rate (currently 10%) and will be payable by you when required to pay for the supply.

**9.4** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST law, to claim a credit for GST paid by you. If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

**9.5** We may, by not less than 7 day's prior notice in writing, amend these Terms and Conditions provided always that in respect of an existing consumer contract (as defined by section 23(3) of Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) for the supply of goods and/or services with a given customer any amended or new terms or conditions shall be void to the extent they are unfair within the meaning of section 24 of that Schedule.

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## 10. PAYMENT

**10.1 Invoices:** An invoice will be issued upon shipping of the Labels ordered.

**10.2** Payment is to be made on or before the 20th of the month following delivery. Payment is to be made by direct credit to the bank account nominated by us unless some other form of payment is agreed in writing.

**10.3 Default:** Without prejudice to our other remedies, failure to pay for Labels by the due date may result in further deliveries being stopped until the overdue payments have been made. Interest on overdue accounts may be charged at a rate equal to 5% *per annum* over our unauthorised bank overdraft rate on any debt not paid by the due date.

**10.4 Costs of Enforcement:** Any costs we incur in the collection of payment of any invoice may be recovered from you.

**10.5 No Set Off:** You may not set off against the price payable for the Labels any claims which you may have against us.

**10.6 Application of Payments:** We may accept and apply payments from you in respect of any indebtedness and we will not be bound by any conditions or qualifications

attaching to such payments.

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## 11. DEFECTS

**11.1 Rejection:** You may only reject Labels: (a) if they do not materially comply with the Quotation and any proofs or samples approved by you, including any Customer's Corrections accepted by us or (b) if permitted by law. Subject in each case to your statutory rights, Labels may only be rejected by notice in writing to us provided within 7 days of delivery of the rejected Labels to you, time being strictly of the essence and (if required by us) you return the relevant Labels, to us in their delivered state or if we require, a sample of them within 14 days of their delivery to you by us.

**11.2 Replacement or Credit:** We will at our option (but subject in each case to your statutory rights) either replace defective Labels or give a credit or refund for such Labels as long as your claim has specifically identified the Labels and the defect and you notify us of the defect within 10 days of taking delivery.

**11.3 Return of Rejected Labels:** If we accept that Labels are defective we will either bear the costs of returning the Labels to us, or may direct you to destroy the defective Labels. Subject to your statutory rights, you may not withhold any payment due to us in respect of any other Labels pending the resolution of a claim for a product defect.

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## 12. DELIVERY

**12.1 Adhesif to Deliver:** We will deliver Labels to the place nominated by you. The cost of delivering Labels to the nominated delivery point will be borne by us but may be charged to you.

**12.2 Place of Delivery:** Delivery will be completed upon receipt of the Labels by you at the place nominated by you.

**12.3 Risk:** All risk in Labels shall, unless otherwise agreed in writing, pass to you upon delivery (whether by delivery to you or by delivery to another person on your instructions) and you shall insure and maintain insurance for the relevant Labels for their full replacement value. You shall provide evidence of such insurance if required by us.

**12.4 Delivery Date:** If you specify a delivery date, we will use our reasonable endeavours to try and deliver the Labels to you by that date but (but subject in each case to your statutory rights) we will not be liable or responsible in any way to you for delivery delays or non-delivery.

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## 13. EXCLUSIONS AND LIMITATIONS

**13.1 Limitation:** No warranty is given and Adhesif will not be liable for:

**13.1.1** alterations to Labels not performed by us;

**13.1.2** damage or failure caused by unusual

or non-recommended use or application of the Labels; or

13.1.3 loss caused by any factors beyond our control.

13.2 Subject to clause 13.6, we will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms and Conditions). It is agreed that loss of profits and loss of business opportunities however and whenever occurring, will constitute indirect or consequential loss or damage.

13.3 **Total Liability:** Subject to clause 13.6, our total liability for defective or damaged Labels or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

*in the case of goods*

13.3.1 the replacement of the goods or the supply of equivalent goods; or

13.3.2 the repair of the goods; or

13.3.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or

13.3.4 the payment of the cost of having the goods repaired; or

*in the case of services*

13.3.5 the supplying of the services again; or

13.3.6 the payment of the cost of having the services supplied again.

13.4 **Statutory Warranties:** Subject to clause 13.6, all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms and Conditions, that are not contained in it, are excluded to the fullest extent permitted by law.

13.5 In circumstances where you are acquiring goods and/or services from us as a "consumer" for the purposes of (and as defined in section 3 of Schedule 2 of) the *Competition and Consumer Act 2010* (Cth), we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms and Conditions as applicable and where permitted by relevant laws.

13.6 Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully

excluded, restricted or modified, which may include the *Competition and Consumer Law Act 2010* (Cth) and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

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#### 14. OUTSIDE WORK

14.1 **Work by Third Parties:** Subject in each case to your statutory rights, if we obtain goods or services from a third party in order to carry out your instructions or complete an Order:

14.1.1 we will not be liable for any breach of these Terms and Conditions if that breach is as a result or is connected with the supply by a third party of such goods or services;

14.1.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services. Any claim by you in relation to the supply of those goods or services must be made directly against the third party; and

14.1.3 you must pay for such goods or services.

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#### 15. COMPLIANCE WITH LAW

15.1 **Lawful Purpose:** You shall ensure that the Labels are used only for lawful purposes and in accordance with any applicable laws.

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#### 16. CANCELLATION

16.1 **Cancellation by Customer:** You may not cancel any Order or part of it without our written consent which may be withheld for any reason. Without prejudice to our right to refuse to allow cancellation of an Order as a condition of giving such consent, we may require to be reimbursed for the cost of labour and materials and other direct or indirect costs incurred by us plus a reasonable profit margin on those items to the date of cancellation.

16.2 **Cancellation by Adhesif:** We will be entitled (without liability to you save as required by relevant laws) to in writing cancel an Order or delivery of an Order if:

16.2.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency; or

16.2.2 you fail to pay any amount for the Labels on the due date; or

16.2.3 we reasonably form the opinion that supplying goods or services to you may have a negative impact upon our business or commercial reputation or image.

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#### 17. SECURITY RISK, INTEREST AND OWNERSHIP

17.1 **Security Interest:** You agree that:

17.1.1 you accept the security agreement set out in these Terms and Conditions;

17.1.2 you grant to us a purchase money security interest, in accordance with the meaning given to that expression in the PPSA, in the Labels as security for all amounts owing and unpaid by you to us in respect of those Labels; and

17.1.3 we may (at our cost), without further notice to you, apply to register a financing statement, or a financing change statement from time to time, with respect to the purchase money security interest referred to in these Terms and Conditions.

17.2 **Identification:** You shall ensure that you and any other person who seeks to identify the Labels, is always able to identify:

17.2.1 the Labels from any other goods that may be in your possession; and

17.2.2 the particular Labels to which any invoice relates.

17.3 **Title:** Full ownership and title to those Labels in respect of which you owe us and have not paid to us any amount shall remain with us until the date:

17.3.1 there are no longer any amounts owing to us for those Labels;

17.3.2 we register a financing statement in respect of those Labels; or

17.3.3 you sell or transform those Labels in accordance with clause 17.5,

whichever date is earlier.

17.4 **Use by Customer:** Until and unless you have paid us in full for the Labels, you shall:

17.4.1 hold those Labels as our bailee;

17.4.2 return those Labels to us on demand; and

17.4.3 immediately pay to us the proceeds of any sale of those Labels or hold any proceeds of sale of those Labels on trust for us in a separate account and not mixed with your other money, debts or property and payable immediately without demand.

17.5 **Sale by Customer:** You agree that you shall only sell Labels in respect of which you have not made full payment to us on the conditions that:

17.5.1 any such sale is conducted at arm's length and is for the full market value of those Labels; and

17.5.2 we have not demanded the return of those Labels.

17.6 **Recovery of Labels:** Until payment in full has been received by us from you in accordance with these Terms and Conditions you authorise and grant an irrevocable licence to us and our authorised

representatives to enter any premises where Labels for which payment in full has not been received by us are kept, to re-take possession of those Labels and to use all reasonable force in doing so without any liability for any resulting damage. You agree and acknowledge that, in addition to any other rights however arising, we or our authorised representative may exercise any and all remedies afforded to a secured party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied, or used by you, to search for and seize, dispose of or retain those Labels in respect to which you have granted to us a purchase money security interest.

**17.7 PPSA:** The parties agree that the following provisions of the PPSA, to the extent referred to below, shall not apply and shall not place any obligations on us in your favour:

**17.7.1** sections 95 and 130 of the PPSA, to the extent that we are required to give a notice to you; and

**17.7.2** sections 96, 125, s129(2), 132(3)(d), 132(4) and 135 of the PPSA.

**17.8 Acknowledgement and Waiver:** You acknowledge receipt of a copy or due notice of these Terms and Conditions and to the extent permitted under the PPSA, waive any right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these Terms and Conditions.

**17.9 Change of Name:** You shall immediately notify us in writing of any change of name.

## 18. FORCE MAJEURE

**18.1** Notwithstanding any other provision of the agreement between us, we have the right for any reason not to accept any Order.

**18.2** Additionally, we may cancel any Order which has been accepted by us, or supply only part of such an Order (in such circumstances we shall not be liable for any default, delay or failure to perform) where this is due (to a material extent) to causes beyond our reasonable control including, but not limited to, a Force Majeure Event.

**18.3** If a Force Majeure Event or such other causes beyond our control arise, we may elect to extend the period for performance as is reasonable in all the circumstances. If a delay or failure by us to perform our obligations due to a Force Majeure Event or other circumstance contemplated above exceeds 60 days, you may thereafter immediately terminate an Order (or the relevant part which has not been delivered) by giving us not less than 5 day's written

notice. In such circumstances [detail remedy].

## 19. WAIVER

**19.1 Customer Waiver:** If we waive any breach of these Terms and Conditions by you the waiver will not affect our right to exercise our rights under these Terms and Conditions at any future time.

## 20. SEVERABILITY

**20.1 Full Force and Effect:** Each clause in these Terms and Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

## 21. GOVERNING LAW

**21.1 NSW Law:** These Terms and Conditions will be interpreted in accordance with and governed by the laws of New South Wales and the courts of New South Wales will have exclusive jurisdiction over any dispute in relation to the Labels or these Terms and Conditions.

## 22. DEFINITIONS

**22.1** Except where the context otherwise provides or requires, the terms **we** or **us** or **our** or **Adhesif** refers to Adhesif Labels Pty Limited (ABN 72 087 815 003) and the terms **you** or **your** or **customer** refers to the person or persons to whom a relevant Quotation is given by us or from whom a relevant Order is received by us or such other person who from time to time is treated as a customer of Adhesif and agrees by conduct or by virtue of notice or otherwise to be bound by these terms and conditions and each such person includes any related company, related party, officer and authorised person of the relevant person.

**22.2** The following terms shall have the meanings specified:

<b>Customer's Correction</b>	A change to a sample specified by a customer in writing to us and accepted by us.
<b>Estimate</b>	A non-binding estimate by us of the cost of an intended Order of Labels or part of it.
<b>Force Majeure Event</b>	means strikes, lock-outs, or other labour disputes, riots, civil disturbance, computer downtime, actions or inaction of governmental authorities, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default of a common carrier.
<b>Label</b>	Any product produced by us for a customer which may include a self adhesive label,

shrink sleeve, or repositionable note, or like product, and where the context requires includes any services relating to a Label and other services provided to the customer by us.

**Quotation** A quotation by us for an order of Labels, including all express and implied terms of the Quotation.

**Order PPSA** An order for Labels means the *Personal Properties Securities Act 2009* (Cth) as amended or replaced from time to time.

7 October 2014

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