

# Terms and Conditions of Trade

Alexander Colquhoun & Son Pty Ltd ABN 68 000 126 312

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## 1. INTRODUCTION

### 1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Colquhouns and the customer for the supply of goods and/or services by Colquhouns to the customer.

### 1.2 Interpretation

In these Terms and Conditions:

“**Colquhouns**” means Alexander Colquhoun & Son Pty Ltd ABN 68 000 126 312 and its associated entities.

“**Additional Work**” includes all work undertaken by Colquhouns as a consequence of the customer's variation, alteration or modification of its instructions in relation to the Order;

“**Business Day**” means a day on which banks are open for general banking business in NSW and the State or Territory in which Colquhouns premises are located;

“**Freight Costs and Charge**” includes all costs and expenses incurred by Colquhouns in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise;

“**Goods**” means all present and after acquired goods produced by Colquhouns under an Order;

“**GST**” means Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

“**Interest Rate**” means a rate 2% higher than the Cash Target Rate as fixed by the Reserve Bank of Australia;

“**Order**” means the work required to be done in order to fulfil the customer's instructions;

“**Preliminary Work**” means any and all work performed by Colquhouns at the customer's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Colquhouns at the time when Colquhouns supplied the Estimate;

“**Colquhouns Charge**” refers in each case to the standard or usual fee charged by Colquhouns from time to time in respect of the Order;

“**Quote**” means the quote described in clause 2.1.

### 1.3 General

In these Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) a reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.

### 1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

### 1.5 Business Day

If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, may be done on the next Business Day.

## 2. QUOTES

### 2.1 Colquhouns to supply quote

Colquhouns may, if requested by the Customer, give the customer a quote specifying the work required to be done in order to fulfil the customer's instructions.

### 2.2 Acceptance by customer

Where Colquhouns has given the customer a Quote:

- (a) Colquhouns need not commence work until the Quote has been accepted by the customer.
- (b) The customer may accept the Quote by instructing in writing by email, fax or letter Colquhouns to commence work.

(c) Acceptance by the customer of the Quote, whether express or implied, will constitute acceptance by the customer of these Terms and Conditions.

### 2.3 Quote evidence of instructions

If the Quote is accepted by the customer, the subject of the quote (the work) shall be carried out and the customer shall pay for the work in accordance with the Quote and these Terms and Conditions.

## 3. CHARGES

### 3.1 Invoice

When the Order has been completed and is ready for dispatch, Colquhouns will issue an invoice for the work done in filling the Order, and for any of the other charges specified in clause 3.2.

### 3.2 Additional Charges

In addition to the amount of the Quote, or where no Quote was given, in addition to the amount representing the Colquhouns Charge for the work done, Colquhouns may charge to the customer:

- (a) fees for any preliminary work performed at the customer's request;
- (b) fees for additional work required to be done as a result of the customer changing his, her or its instructions;
- (c) fees for having to work from poor copy;
- (d) fees for work which involves tables or foreign language and which was not notified to Colquhouns before the Quote was prepared;
- (e) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (f) fees and other charges for work required to be done urgently, including any overtime costs;
- (g) fees for handling or storing material or equipment supplied by the customer for the purposes of the Order if the customer delays receipt of finished goods;
- (h) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the customer;
- (i) freight costs and charges;
- (j) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

### 3.3 Under/Over supplies

(a) The customer acknowledges that whilst Colquhouns will make every endeavour to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order (“a discrepancy”).

(b) Where a discrepancy occurs Colquhouns will adjust the amount charged to the customer for the Order a pro rata amount to reflect the actual number of items produced.

## 4. DELIVERY

### 4.1 Notification

Colquhouns shall notify the customer when the Goods are ready for collection.

### 4.2 Collection

The customer must collect the Goods from Colquhouns premises upon being notified by Colquhouns that the Goods are ready for collection. If Colquhouns agrees to deliver the Goods the customer shall bear all freight costs and charges of such delivery, unless specified differently in the quote.

### 4.3 Rejection

Subject to clause 7.1 the customer may only reject the Goods if they do not comply with the customer's order or quote. If the customer wishes to reject the Goods, the customer must notify Colquhouns of the rejection:

- (a) if Colquhouns agrees to deliver the Goods to the customer's premises – within 7 days of delivery (or such other time as is mutually agreed);
- (b) otherwise - within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

### 4.4 Risk

The risk in the Goods passes to the customer:

- (a) if Colquhouns delivers the Goods to the customer's premises - at the time of delivery;
- (b) otherwise - at the time Colquhouns notifies the customer that the goods are ready for collection, if collection is not done within a reasonable amount of time.

If the customer is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to Colquhouns at the time the customer returns the Goods.

## **5. PAYMENT**

### **5.1 Time for payment**

The customer must, within the agreed payment terms, pay to Colquhouns the total amount set out in the invoice. Invoice will be sent with the goods or as requested by the customer.

### **5.2 Method of payment**

Payment is to be made by the customer by direct deposit, cash, cheque or credit card or any other form of payment as agreed by Colquhouns and the customer. Unless otherwise stated, all payment shall be in Australian Dollars. Credit Card payments may be subject to a fee of 2%

### **5.3 Interest**

Colquhouns may charge interest at the Interest Rate on amounts not paid within the time specified in clause 5.1.

### **5.4 Advance and progress payments**

(a) Colquhouns may issue an invoice for the amount of the Quote before commencing the Order where Colquhouns has not previously carried out work for the customer or where Colquhouns considers it otherwise prudent to do so;

(b) If the Order is suspended for more than 30 days at the request of the customer or as a result of something for which the customer is responsible, Colquhouns may issue an invoice for a particular sum (to be specified by Colquhouns) for the work already done and for other costs incurred by Colquhouns (such as storage costs).

## **6. NON-PAYMENT**

### **6.1 Damages**

The customer must pay to Colquhouns any costs, expenses or losses incurred by Colquhouns as a result of the customer's failure to pay to Colquhouns all sums outstanding from the customer to Colquhouns (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

### **6.2 Retention of title**

(a) Until the customer has paid all amounts outstanding in relation to the Goods and any other goods supplied by Colquhouns to the customer, title and property in the Goods shall not pass from Colquhouns to the customer.

(b) If the Goods are in the customer's possession, the customer shall hold the Goods as trustee for Colquhouns and must store the Goods so that they are clearly identifiable as the property of Colquhouns.

(c) Colquhouns may call for and recover possession of the Goods (for which purposes Colquhouns employees or agents may enter the customer's premises and take possession of the Goods without liability to the customer) and the customer must deliver the Goods to Colquhouns if so directed by Colquhouns.

(d) The customer may, in the ordinary course of the customer's business, sell the Goods to a third party but:

(i) the proceeds of sale to the third party shall be held by the customer as trustee for Colquhouns and the customer shall account to Colquhouns for those sums; and

(ii) if Colquhouns requires, the customer shall assign to Colquhouns the customer's claim against the third party and shall execute all documents necessary to effect that assignment.

### **6.3 General lien**

Colquhouns shall, in respect of all sums owed by the customer to Colquhouns hereunder, have a general lien on all property of the customer in Colquhouns possession and may, after 14 days' notice to the customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the customer's property held by Colquhouns as aforesaid enjoys copyright protection in favour of the customer, the customer hereby grants to Colquhouns a licence to exercise the rights conferred on Colquhouns under this clause.

## **7. LIABILITY**

### **7.1 Proofs**

If Colquhouns submits to the customer a proof of the Goods Colquhouns will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the customer before the Order was completed.

### **7.2 Non-excludable Rights**

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the customer in relation to the provision of the Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

### **7.3 Disclaimer of Liability**

Colquhouns disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those

conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of Colquhouns for a breach of a Non-excludable Right is limited, at Colquhouns option, to the supplying of the Goods and/or services or payment of the cost of having the Goods and/or services supplied again.

### **7.4 Indirect losses**

Notwithstanding any other provision of these Terms and Conditions, Colquhouns is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the customer for:

(a) any increased costs or expenses;

(b) any loss of profit, revenue, business, contracts or anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Colquhouns failure to complete or delay in completing the Order or to deliver the Goods.

### **7.5 Force Majeure**

Colquhouns will have no liability to the customer in relation to any loss, damage or expense caused by Colquhouns failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of Colquhouns normal suppliers to supply necessary materials or any other matter beyond Colquhouns control.

## **8. GENERAL MATTERS**

### **8.1 Alterations to style etc**

If, before the Quote is prepared, the customer does not give Colquhouns specific instructions in relation to style, type or layout:

(a) Colquhouns may use any style, type and layout which, in Colquhouns opinion, is appropriate; and

(b) Colquhouns may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the customer subsequently altering the style, type or layout used by Colquhouns.

### **8.2 Material supplied by customer**

If Colquhouns and the customer agree that the customer is responsible for supplying materials or equipment for the purposes of the Order:

(a) The customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Colquhouns.

(b) Colquhouns will not normally count or check the materials and if requested by the customer to do so, may charge for counting or checking.

(c) Colquhouns will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the customer.

(d) Property in any materials supplied by the customer and incorporated into the Goods passes to Colquhouns at the time of incorporation.

### **8.3 Responsibility to insure**

Colquhouns has no obligation to insure any property of the customer in Colquhouns possession. The customer must pay the cost of any insurance arranged by Colquhouns at the request of the customer.

### **8.4 Ancillary materials**

Unless Colquhouns and customer agree otherwise, drawings, sketches, photographs, designs, models, negatives, positives, blocks, plates, discs, or other media or data and other material produced by Colquhouns in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of Colquhouns.

### **8.5 Copyright**

(a) Copyright in all artistic and literary works authored by Colquhouns shall be the property of Colquhouns.

(b) The customer:

(i) warrants that the customer has copyright in or a licence to authorise Colquhouns to reproduce, all artistic and literary works supplied by the customer to Colquhouns for the purposes of the Order and the customer hereby expressly authorises Colquhouns to reproduce all and any of such works for the purposes aforesaid;

(ii) hereby indemnifies and agrees to keep indemnified Colquhouns against all liability, losses or expenses incurred by Colquhouns in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and

(c) The customer is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by Colquhouns for the purposes of the Order. However the exercise of such licence shall be conditional upon Colquhouns having received all monies due to Colquhouns under these Terms and Conditions.

### **8.6 Ideas**

The customer must keep confidential and not use any ideas communicated by Colquhouns to the customer without Colquhouns written consent.

### 8.7 Electronic media

All disks or other media (other than media supplied by the customer) used by Colquhouns to store data for the purposes of completing the Order are the property of Colquhouns. The customer cannot require Colquhouns to supply to the customer any data so stored. In the event that Colquhouns does supply any data so stored or created Colquhouns may charge for supplying such data to the customer.

### 8.8 Storage of electronic data

Colquhouns will not be responsible for storing any data on disks or other media when the Order has been completed. If Colquhouns agrees to store such data, Colquhouns may charge for doing so.

### 8.9 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### 8.10 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 8.11 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of NSW and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

## 9 GOODS AND SERVICES TAX

### 9.1 All amounts are GST exclusive amounts

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

### 9.2 Printer to assist Customer

Colquhouns will do all things reasonably available to it to assist the customer to claim on a timely basis any input tax credits (if any) the customer may be entitled to claim for any acquisition of goods and services from Colquhouns. This includes Colquhouns maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the customer.

## 10. PERSONAL PROPERTY SECURITIES ACT

### 10.1 Security Interest

The customer acknowledges and agrees that:

- (a) these Terms and Conditions give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2009; and
- (b) the security interest can be taken in all Goods previously supplied by Colquhouns to the customer (if any) and all Goods that will be supplied in the future by Colquhouns to the customer during the continuance of the parties' relationship.

### 10.2 Undertaking

The customer undertakes to:

- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which Colquhouns may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) reimburse Colquhouns for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
- (c) give Colquhouns not less than 14 days' prior written notice of any proposed change in the customer's name and/or any other change in the customer's details.

### 10.3 Verification Statement

The customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

### Office use only section:

#### REPS COMMENTS

Territory: Warehouse:

Est Sales Monthly: Rep:

Industry: Region:

Account Number:

Credit Limit:

Trading Terms:

Opened By:

Date:

Authorised by:

Date: