

## TERMS AND CONDITIONS OF TRADE – FULFILMENT PARTNERS PTY LTD. ABN 89 086 601 747

### 1. DEFINITIONS

In these terms and conditions unless the context otherwise requires:

- (a) 'Fulfilment Partners Pty Ltd' means a company incorporated in New South Wales of L5, 84 Pitt Street Sydney NSW 2000.
- (b) 'Contract' means the contract created by acceptance by the Customer of Fulfilment Partners Pty Ltds quotation, written or oral brief.
- (c) 'The Customer' means any person or company which accepts a quotation whether by itself or by an agent on its behalf.
- (d) 'Materials' includes goods, products, stocks, envelopes, packaging, print and other materials used or to be used by Fulfilment Partners Pty Ltd in performance of or in connection with the Contract and / or supplied by the Customer in connection with the Contract.

### 2. QUOTATIONS

- (a) Quotations given are subject to acceptance within thirty (30) days and subject to the right of withdrawal or revision. If any changes occur in the cost of materials, labour or other costs quotations shall be subject to revision by Fulfilment Partners Pty Ltd accordingly.
- (b) Fulfilment Partners Pty Ltd shall endeavour to deliver the quantities quoted but owing to the difficulty of producing exact quantities, estimates, quotations and / or orders are conditioned upon margins being allowed for overs or shortage within the range ordinarily accepted within the industry.
- (c) Cancellation of an order will be subject to the Customer compensating Fulfilment Partners Pty Ltd in full for all work done and materials used to date of cancellation.

### 3. ACCEPTANCE

- (a) Acceptance of the quotation or an order placed as a result thereof shall be deemed acceptance of these terms and conditions notwithstanding any inconsistency which may be introduced by terms and conditions contained in the Customer's order and no variation of these terms and conditions shall be of any effect whatsoever unless otherwise expressly agreed by Fulfilment Partners Pty Ltd in writing.
- (b) The Customer agrees that there are no other conditions, warranties, representations or other terms affecting acceptance of the quotation other than those embodied herein except any conditions, warranties or other terms which may arise by applicable legislation and which can not be excluded, omitted or varied by contract.
- (c) The Customer warrants that nothing contained in Materials supplied by the Customer constitutes an infringement of design, copyright, patent, trademark, trade name or is defamatory or obscene.
- (d) Fulfilment Partners Pty Ltd shall be entitled in its sole discretion to refuse at any stage to mail or deliver any Materials which in its opinion may constitute an infringement of design, copyright, patent, trademark or trade name, be defamatory, obscene, an invasion of privacy, pornographic, tend to ridicule or embarrass or is in bad taste, be misleading or deceptive or the distribution of which may be contrary to law and Fulfilment Partners Pty Ltd shall not be liable for any loss, cost or damage suffered by the Customer as a result of any such refusal.
- (e) The Customer agrees to indemnify and keep indemnified Fulfilment Partners Pty Ltd against all claims, actions, suits, liabilities, costs or expenses suffered or incurred by Fulfilment Partners Pty Ltd arising directly or indirectly out of any defect or fault in the Materials supplied by the Customer or any breach by the Customer of these terms and conditions (including any breach of warranty), which indemnity shall extend to include all Fulfilment Partners Pty Ltd legal costs and expenses (on a solicitor / client basis).

### 4. POSTAGE

- (a) Postage will be invoiced separately to the customer and is required to be prepaid prior to lodgement unless otherwise expressly agreed by Fulfilment Partners Pty Ltd in writing.
- (b) Fulfilment Partners Pty Ltd will make every effort to meet scheduled delivery and mailing dates but Fulfilment Partners Pty Ltd will not be responsible for any delay in mailing or delay in delivery of mail by Australia Post or for any consequential loss or damage occasioned thereby nor shall Fulfilment Partners Pty Ltd be responsible for any loss, cost or damage suffered by the Customer where the Customer has failed and / or neglected to meet the aforesaid payment terms for postage.

### 5. FREIGHT

- (a) Fulfilment Partners Pty Ltd will make every effort to meet scheduled delivery dates but will not be responsible for any delay in carriage or freight dispatch or delay in delivery by Fulfilment Partners Pty Ltd's carriers or for any consequential loss or damage occasioned thereby nor shall Fulfilment Partners Pty Ltd be responsible for any loss, cost or damage suffered by the Customer where the Customer has failed and / or neglected to meet the aforesaid payment terms for freight.
- (b) The Customer shall pay upon demand all courier charges by Fulfilment Partners Pty Ltd at the request of or for the benefit of the Customer and which are not included in the quotation for freight.

### 6. WAREHOUSING AND INSURANCE

Any of the Customer' s Materials held by Fulfilment Partners Pty Ltd or stored at Fulfilment Partners Pty Ltd premises or by mutual agreement at other premises shall be at the sole risk of the Customer. Fulfilment Partners Pty Ltd accepts no responsibility or liability for the handling or storage of the Customer's Materials. If the Customer wishes to insure against any such risks separate insurance arrangements may be made with Fulfilment Partners Pty Ltd.

### 7. MATERIALS

- (a) Where the Customer supplies Materials in connection with the Contract Fulfilment Partners Pty Ltd accepts no responsibility or liability for any errors or defects in work performed resulting directly or indirectly from defects in or the unsuitability of the Materials so supplied.
- (b) Fulfilment Partners Pty Ltd agrees to carry out the quoted services on the basis that the information and Materials supplied by the Customer are of the standard and quality as specified in the quotation or otherwise as indicated by the Customer and in the event that additional costs or time are incurred by Fulfilment Partners Pty Ltd due to information or Materials not being as specified or indicated Fulfilment Partners Pty Ltd shall be entitled to charge the Customer for such additional costs or time and / or Fulfilment Partners Pty Ltd shall be entitled to exercise its discretion as to whether or in what manner to proceed with performance of the Contract.
- (c) Customer's Materials delivered to Fulfilment Partners Pty Ltd premises or other premises as mutually agreed are accepted on the basis that Fulfilment Partners Pty Ltd accepts no responsibility or liability for the accuracy of the delivery dockets accompanying such deliveries. Fulfilment Partners Pty Ltd may accept counts of Materials as reported by the Customer or its agent but shall not be responsible for any discrepancy.
- (d) An allowance of 5% should be provided to cover unavoidable spoilage during setup and processing. Fulfilment Partners Pty Ltd shall not be liable for any shortage of material due to spoilage.
- (e) If within fourteen (14) days of completion of Fulfilment Partners Pty Ltd's work pursuant to the Contract Fulfilment Partners Pty Ltd is not given any instruction by the Customer in relation to disposal of any of the Customer's excess Materials the Customer shall be liable for the costs of storage thereof at weekly storage rates to be notified by Fulfilment Partners Pty Ltd and / or Fulfilment Partners Pty Ltd may dispose of such excess Material at its discretion without being liable or responsible to account to the Customer therefore.

(f) The Customer shall ensure and warrants to Fulfilment Partners Pty Ltd that its instructions to Fulfilment Partners Pty Ltd and all Materials supplied by the Customer and used in performing the Contract comply with the requirements of all applicable legislation and regulations including relating to the marketing and / or labelling and /or packing thereof. No warranty is given or responsibility accepted by Fulfilment Partners Pty Ltd to ensure that such Materials comply with the requirements of any such legislation or regulations.

(g) Fulfilment Partners Pty Ltd shall have a general lien for any outstanding debts of the Customer against all of any of the Customer's property and materials in Fulfilment Partners Pty Ltd's possession.

#### **8. CUSTOMER LISTS**

Lists of customers supplied to Fulfilment Partners Pty Ltd by the Customer shall be treated by Fulfilment Partners Pty Ltd as confidential but Fulfilment Partners Pty Ltd does not accept any liability or responsibility for any loss suffered by the Customer in the event of loss of such lists by fire, vandalism, theft or other cause beyond reasonable control of Fulfilment Partners Pty Ltd nor shall Fulfilment Partners Pty Ltd be liable for any intangible or special value attached thereto.

#### **9. TERMS OF PAYMENT**

(a) The terms cannot be altered or supplanted by any other terms, including the Customers terms without the written agreement of Fulfilment Partners Pty Ltd.

(b) Except for prepayment of postage, payment for mail processing, freight, envelopes and printing shall be payable within fourteen (14) days from the date of invoice. At the option of Fulfilment Partners Pty Ltd an administration charge at the rate of 1.5% per month will be charged on any amounts outstanding after the said fourteen (14) days.

#### **10. FORCE MAJEURE**

Fulfilment Partners Pty Ltd shall not be responsible or liable for any delays in or inability to carry out the Contract or variation or cancellation of the Contract owing to an act of God, war, strikes, lockouts, fire, flood, drought or any other cause beyond Fulfilment Partners Pty Ltd's reasonable control.

#### **11. DRAFTS, ARTWORK, ETC.**

(a) All artwork, sketches, drawings, negatives, plates, press work, layouts, programs, specifications, copy, copywriting, dummies and other experimental, investigative or preparatory work prepared or supplied by Fulfilment Partners Pty Ltd at the Customer's request will be considered an order and charged for at Fulfilment Partners Pty Ltd's current rates for such work unless otherwise agreed in writing by Fulfilment Partners Pty Ltd.

(b) All work property and materials referred to in sub-clause (a) supplied or prepared by Fulfilment Partners Pty Ltd shall remain the exclusive property of Fulfilment Partners Pty Ltd unless otherwise agreed in writing with the Customer and no use of same shall be made nor any ideas obtained there from be used without the written consent of Fulfilment Partners Pty Ltd and / or upon such terms as to compensation as Fulfilment Partners Pty Ltd shall require.

(c) Notwithstanding that the Customer's systems and procedures may have been designed to operate with programs and specifications prepared by Fulfilment Partners Pty Ltd for the Customer and the property therein shall remain at all times vested in Fulfilment Partners Pty Ltd and the Customer agrees not to use or disclose the nature of such programs or specifications to other persons.

#### **12. PROOFS**

(a) No responsibility or liability shall be accepted for errors in a proof approved by the Customer and any additions or alterations to a proof not due to error by Fulfilment Partners Pty Ltd may be charged extra as author's corrections.

(b) Fulfilment Partners Pty Ltd may make additional charges to the Customer for press proofs unless the Customer is present when the form is made ready on the press so that no press time is lost.

#### **13. PALLETS**

Where the Customer's Materials are delivered on or in pallets or other forms of packaging Fulfilment Partners Pty Ltd accepts no responsibility or liability for such pallets or other forms of packaging the risk therein remaining at all times vested in the Customer and Fulfilment Partners Pty Ltd may charge the Customer for the cost of return of such pallets or other forms of packaging.

#### **14. CLAIMS**

(a) Work performed shall be deemed to be acceptable to the Customer unless Fulfilment Partners Pty Ltd is notified in writing within fourteen (14) days of completion of the Contract.

(b) The liability of Fulfilment Partners Pty Ltd for any claim shall be limited to the value of the work performed and Fulfilment Partners Pty Ltd shall not be liable for any indirect or consequential or special loss suffered by the Customer or any loss to the Customer arising from third party claims.

(c) Notwithstanding any other provision of these terms and conditions, it is expressly agreed that nothing in these terms and conditions shall exclude, limit or vary any liability which may arise under the Trade Practices Act or any other applicable State or Federal legislation (if applicable) and which can not be excluded, limited or varied or to the extent that such liability may not be excluded, limited or varied.

#### **15. DEFAULT**

If the Customer defaults in payments to Fulfilment Partners Pty Ltd (or being an individual dies, becomes bankrupt or insolvent) or is wound up or a resolution is proposed or passed or an order made or legal proceedings instituted for winding up of the Customer or if a receiver or a receiver and manager is appointed in respect of any of the Customer's undertaking, property or assets or if any compromise or arrangement is proposed or made between the Customer and the Customer's creditors or any of them or if an application is made to any court for an order summoning a meeting of the creditors of the Customer then in any such event Fulfilment Partners Pty Ltd may at its option withdraw from or cancel or suspend this Contract (so far as it remains unperformed) in all or in part without liability on the part of Fulfilment Partners Pty Ltd and the Customer shall remain liable for all costs of and work done by Fulfilment Partners Pty Ltd to date of such withdrawal, cancellation or suspension.