

Foilmakers Australia Pty Ltd T/A Milford Astor Foilmakers – Terms & Conditions of Trade

1. Definitions	(b) The Customer has met all of its other obligations to the Company.	12.3	The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.
1.1 "Company" means Foilmakers Australia Pty Ltd T/A Milford Astor Foilmakers (ABN 34 059 047 746), its successors and assigns or any person acting on behalf of and with the authority of Foilmakers Australia Pty Ltd T/A Milford Astor Foilmakers (ABN 34 059 047 746).	Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.		
1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.	13.	Default and Consequences of Default
1.3 "Goods" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	(b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	13.1	Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Customer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
1.4 "Price" means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 4 below.	(c) The Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.	13.2	If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
1.5 "FCM" means Freight Carrier. The Company shall deliver the Goods, cleared for export, to the carrier selected by the Customer. The Company loads the Goods if the carrier pickup is at the Company's premises. From that point, the Customer bears the costs and risks of moving the Goods to destination.	(d) The Company may recover possession of any Goods in transit whether or not delivery has occurred.	13.3	Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
1.6 "CIP" means Carriage and Insurance Paid To. The Customer shall pay for moving the Goods to their final destination. From the time the Goods are transferred to the first carrier, the Customer bears the risks of loss or damage. The Company shall purchase the cargo insurance.	(e) The Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	13.4	Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due; (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
2. Acceptance	9. Personal Property Securities Act 2009 ("PPSA")		
2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	9.1	
2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.	9.2	
3. Change in Control	(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to: (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; (ii) register any other document required to be registered by the PPSA; or (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);	9.3	
3.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.	(b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	9.4	
4. Price and Payment	(c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;	9.5	
4.1 At the Company's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Company to the Customer; or (b) the Price as at the date of delivery of the Goods according to the Company's current price list; or (c) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company;	9.6	
4.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled Services (including, but not limited to, any variation due to fluctuations in the currency exchange rate, or as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.	(e) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	9.7	
4.3 At the Company's sole discretion a non-refundable deposit may be required.	9.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	9.8	
4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be: (a) on delivery of the Goods; (b) before delivery of the Goods; (c) fourteen (14) days following the date of the invoice; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.	9.5 The Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.	9.9	
4.5 The Customer acknowledges and accepts that the Company's invoices are issued without prejudice and are subject to errors and omissions excepted (E&OE) and may therefore, change without notice, where an error or omission is discovered. The Customer shall not be entitled to treat this contract as repudiated in the event of an E&OE.	9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	10.	Security and Charge
4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed between the Customer and the Company.	9.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.	10.1	In consideration of the Company agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	9.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 9.3 to 9.5.	10.2	The Customer indemnifies the Company from and against all of the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
5. Delivery of Goods	9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	10.3	The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
5.1 Delivery ("delivery") of the Goods is taken to occur at the time that: (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Company's address; or (b) the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	10.4 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	11.	
5.2 At the Company's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Goods.	11.2	
5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.	11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	11.3	
5.4 The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	11.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	11.4	
5.5 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.	11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by section 64A of Schedule 2.	11.5	
6. Export Contracts	11.5 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.	11.6	
6.1 In the event that the Goods are exported, delivery of the Goods may be subject to either FCA Contract or CIP Contract.	11.6 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.	11.7	
6.2 In the event of a FCA Contract the following shall apply: (a) the Goods shall be delivered to the Customer by delivery on board the agreed upon mode of transport on the delivery date. The Company shall promptly notify the Customer that the Goods have been delivered aboard. Title (subject to clause 8) to, and risk in the Goods shall pass to the Customer upon such delivery being effected. The Company shall promptly provide the Customer with a clean shipped bill of lading in respect of the Goods. (b) the Customer shall reserve the necessary space on board the agreed upon mode of transport and give the Company due notice of the loading berth and any revised delivery dates. The Customer shall bear any additional costs caused due to the failure of the agreed upon mode of transport being available to load the Goods on the delivery date.	11.7 If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is: (a) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion; (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods; (c) otherwise negated absolutely.	12.	
6.3 In the event of a CIP contract the following shall apply: (a) the Goods shall be delivered to the Customer by delivery on board the agreed upon mode of transport on or before the delivery date. The Company shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Customer. The Goods shall be at the risk of the Company as they are loaded on board. The Company shall promptly tender to the Customer a clean shipped bill of lading, the insurance policy and an invoice in respect of the Goods. (b) the Customer shall accept the documents tendered by the Company if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.	11.8 Subject to this clause 11, returns will only be accepted provided that: (a) the Customer has complied with the provisions of clause 11.1; and (b) the Company has agreed that the Goods are defective; and (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	12.1	
7. Risk	11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Customer failing to properly maintain or store any Goods; (b) the Customer using the Goods for any purpose other than that for which they were designed; (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) the Customer failing to follow any instructions or guidelines provided by the Company; (e) fair wear and tear, any accident, or act of God.	12.2	
7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.	11.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.	12.3	
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.	11.11 Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.	12.4	
7.3 If the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.	12. Intellectual Property	12.5	
7.4 The Company will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.	12.1 Where the Company has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company.	12.6	
8. Title	12.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.	12.7	
8.1 The Company and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Company all amounts owing to the Company; and	12.3 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.	12.8	