

# Cutler Brands Sales Terms

## 1. AGREEMENT

- 1.1. In this agreement, "Cutler" means Cutler Brands Pty Ltd A.C.N. 050 166 160.
- 1.2. The agreement for the supply of the Goods and/or Services by Cutler to the Customer consists of the following documents:
  - 1.2.1. these Sales Terms;
  - 1.2.2. any Quote;
  - 1.2.3. Credit Application, if approved by Cutler;
  - 1.2.4. any Specifications referred to in the Quote;
  - 1.2.5. Customer Price List; and
  - 1.2.6. any variation agreed to in writing between the parties.
- 1.3. If there is any inconsistency between the Sales Terms, Quote, and the Credit Application, then these Sales Terms will prevail to the extent of such inconsistency.
- 1.4. These Sales Terms take precedence over any terms contained in any document of the Customer.

## 2. ACCEPTANCE OF SALES TERMS

- 2.1. On provision of these Sales Terms to the Customer, the Customer must accept the Sales Terms by returning a signed copy of the Sales Terms to Cutler or by reply email confirming its acceptance to the Sales Terms.
- 2.2. Notwithstanding clause 2.1, the Customer is deemed to accept these Sales Terms if the Customer:
  - 2.2.1. places any order for Goods or Services from Cutler; or
  - 2.2.2. accepts a Quote; or
  - 2.2.3. makes payment of any Invoice to Cutler, after these Sales Terms have been provided to the Customer.

## 3. QUOTES

- 3.1. Cutler may provide the Customer with a Quote.
- 3.2. Any Quote issued by Cutler is valid for 30 days from the date of issue.
- 3.3. Unless otherwise stated in writing, a Quote does not include costs of delivery or GST of Goods.
- 3.4. Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to Cutler.

## 4. ORDERS

- 4.1. Every Order by the Customer for the provision of Goods or Services must be submitted in writing (unless otherwise agreed).
- 4.2. Where a Quote has been provided to the Customer, the Customer must reference the Quote number in the Order.
- 4.3. Cutler may in its absolute discretion refuse to supply Goods or Services where:
  - 4.3.1. Goods are unavailable for any reason whatsoever;
  - 4.3.2. the Customer's credit limit has been exceeded;
  - 4.3.3. payment for Goods or Services previously provided to the Customer or any associated entity of the Customer (as determined by Cutler, acting reasonably), has not been received by Cutler.

## 5. SPECIFICATIONS SUPPLIED BY CUSTOMER

- 5.1. If the Customer requires the Goods to be made to the Specifications, it must provide a copy of the Specifications to Cutler in advance of Cutler providing the Quote.
- 5.2. In manufacturing the Goods, any deviation from the Specifications do not constitute a basis for any Claim against Cutler, provided that such deviations are not material and do not render the Goods unfit for their intended purpose.
- 5.3. After a Quote has been accepted or an Order has been placed by the Customer, Cutler will endeavour to comply with any subsequent requests for additions or variations of Specifications, but is under no obligation to do so and may require Additional Charges to be paid by the Customer.
- 5.4. Cutler is not responsible for errors in Specifications or proofs which have been finally approved by the Customer.

## 6. AMENDMENTS & CANCELLATIONS

- 6.1. After the 30 day period referred to in clause 3.2 has expired, Cutler reserves the right to amend any Quote to take account of any rise or fall in the cost of completing the proposed Order.

- 6.2. Cutler will notify the Customer of such amendment as soon as practicable.
- 6.3. An Order that has been placed by the Customer cannot be cancelled without the prior written consent of Cutler. Where an Order is cancelled, the Customer indemnifies Cutler against any Loss incurred by Cutler as a result of the cancellation.

## 7. PROVISION OF GOODS ON CREDIT AND CREDIT APPLICATION

- 7.1. The Customer has no entitlement to credit unless, in Cutler's sole discretion, Cutler extends credit to the Customer, only up to the Credit Limit approved.
- 7.2. The Customer may apply to Cutler in writing to increase or reduce the Credit Limit at any time. Cutler may agree or refuse to increase the Credit Limit in its absolute discretion.
- 7.3. The Customer agrees and acknowledges that:
  - 7.3.1. the Customer must apply for credit by completing the Credit Application in Schedule 1 of these Sales Terms.
  - 7.3.2. Cutler may contact the referees listed by the Customer, and discuss the Customer's credit history;
  - 7.3.3. Cutler may impose conditions on the provision of credit or in the circumstances of increase to the Credit Limit in its absolute discretion, for example including the requirement for a bank guarantee;
  - 7.3.4. the Customer is required to ensure at all times that the aggregate amount of all outstanding invoices issued by Cutler to the Customer does not exceed the Credit Limit; and
  - 7.3.5. the Customer must notify Cutler in writing as soon practicable and within 3 days to any changes to information in the Credit Application.
- 7.4. In submitting a Credit Application to Cutler, the Customer represents and warrants that:
  - 7.4.1. all the information in the Credit Application provided to Cutler is accurate, correct and complete; and
  - 7.4.2. the Customer is not the subject of an Insolvency Event.
- 7.5. At any time and for any reason in Cutler's sole discretion, Cutler reserves the right to refuse to supply any Goods or Services to the Customer on credit. Such refusal does not affect the Customer's liability for unpaid Goods and Services.
- 7.6. If the Customer fails to comply with these Sales Terms or fails to pay any amount to Cutler when due, or the Customer is subject to an Insolvency Event, the balance of the Customer's account will become due and payable immediately.

## 8. CUSTOMER-SUPPLIED PRODUCTS

- 8.1. The Customer warrants to Cutler that the Customer-Supplied Products are fit for their intended purpose (having regard to the Goods and Services to be performed by Cutler), and are free of defects, clean, correct to specification and, if applicable, in ready condition for Cutler to perform the Services. Without limiting the foregoing, the Customer warrants to Cutler that the Customer-Supplied Products are not affected by any of the following defects:
  - 8.1.1. Chipped finishes;
  - 8.1.2. Internal loose glass;
  - 8.1.3. Ultra-thin base or sidewall;
  - 8.1.4. Out of round, uneven glass distribution;
  - 8.1.5. Excessive cold/hot end coating;
  - 8.1.6. Salt bloom;
  - 8.1.7. Inclusions.
- 8.2. If Cutler performs work on Customer-Supplied Products, Cutler will be entitled to payment of the Price with respect to that work notwithstanding that the Customer-Supplied Products may not be the goods or chattels described in the Order;
- 8.3. The Customer must undertake its own investigations as to the suitability, reliability and risks of any Customer-Supplied Products in connection with the Goods and Services provided by Cutler.
- 8.4. Any comment, suggestion, information, or assistance given by Cutler in relation to the Customer-Supplied Products, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. Cutler does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such comment, suggestion, information or assistance.
- 8.5. Cutler will take reasonable care when dealing the Customer-Supplied Products.
- 8.6. Notwithstanding clause 8.5, Cutler is not responsible for any Loss or spoilage of or damage to Customer-Supplied

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Products incurred in running trials, producing, testing, providing the Services, or normal process variation, or wastage of any nature.

### 9. ADDITIONAL CHARGES

Cutler may require the Customer to pay Additional Charges if:

- 9.1. additional work is requested by the Customer which causes Cutler to incur costs in excess of the Quote;
- 9.2. inadequate or incorrect information is provided by the Customer to Cutler in the course of preparing the Quote or the Order;
- 9.3. information or material is supplied later than required by Cutler in these Sales Terms, in order for it to provide the Goods or Services within the specified time frame (if any);
- 9.4. the Customer cancels an Order, resulting in Loss to Cutler;
- 9.5. there are material changes in Cutler's underlying costs of production, materials, or applicable industrial award rates, in which case 30 days' notice to the Customer will be given in advance of the Additional Charges becoming payable;
- 9.6. Cutler is unable to deliver the Goods or Services as contemplated by clause 11.10;
- 9.7. the Customer has not collected Goods inside the Pick-Up Time in accordance with clause 12; or
- 9.8. Cutler incurs any third-party expenses for the Customer including courier, packing, delivery, storage and handling charges, government taxes or duties or other imposts, not included in the Quote.

### 10. RISK AND TRANSPORTATION OF GOODS

- 10.1. Goods supplied by Cutler will be either delivered by Cutler or collected by the Customer, depending on the terms of the Order.
- 10.2. If Goods will be delivered, the Delivery Point will be specified in the Order.
- 10.3. If Goods will be collected, collection will occur from the Pick-Up Point nominated by Cutler.
- 10.4. Risk in the Goods immediately passes to the Customer when:
  - 10.4.1. the Customer collects the Goods from the Pick-up Point; or
  - 10.4.2. the Goods are delivered to the Delivery Point, as the case may be.

### 11. DELIVERY

- 11.1. If the Goods are to be delivered to the Customer, then this clause 11 applies.
- 11.2. The Delivery Point will be specified in the Order.
- 11.3. The time of delivery of finished Goods specified in the Quote is an estimate only.
- 11.4. Cutler may arrange transport of the finished Goods by any means in its absolute discretion.
- 11.5. Unless otherwise agreed, delivery will be made, Monday – Friday between 5.00am-5.00pm.
- 11.6. Cutler or its transport contractor will deliver and unload the Goods as close to the Delivery Point as is safe or prudent to do so, as determined by Cutler or its transport contractor, acting reasonably.
- 11.7. The Customer must ensure that it has personnel on site at the Delivery Point to accept the delivery of the finished Goods.
- 11.8. The unloading of Goods at the Delivery Point and loading the Customer's vehicle, is the Customer's responsibility at its own cost and risk.
- 11.9. Cutler may at its option deliver the Goods to the Customer in any number of instalments unless otherwise agreed.
- 11.10. If Cutler is unable to deliver the Goods or Services to the Customer at the Delivery Point, for any reason not attributable to the fault of Cutler or its transport contractor:
  - 11.10.1. the Customer indemnifies Cutler for all Loss incurred by Cutler arising from the non-delivery;
  - 11.10.2. without limiting clause 11.10.1, Additional Charges will apply in respect of extra costs incurred by Cutler due to the non-delivery, calculated in accordance with the Customer Price List.

### 12. COLLECTION

- 12.1. If the Goods are to be collected, then this clause 12 applies.
- 12.2. The Customer must pick up the Goods from the Pick-up Point before the expiry of the Pick-up Time.
- 12.3. At the Pick-up Point, Cutler may set the Goods down alongside the Customer's vehicle in which case the risk in the Goods immediately passes to the Customer and collection is effected when the Goods are set down alongside the Customer's vehicle.

12.4. The unloading of Goods at the Pick-up Point and loading the Customer's vehicle, is the Customer's responsibility at its own cost and risk.

12.5. If the Customer does not pick up the Goods before the expiry of the Pick-Up Time:

- 12.5.1. the Customer indemnifies Cutler for all Loss incurred by Cutler arising from the Customer not picking up the Goods by the Pick-up Time; and
- 12.5.2. Cutler reserves the right to vary the Quote and/or send a further invoice to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the not picking up the Goods by the Pick-up Time, in accordance with its then current charge rates.

### 13. ACCEPTANCE OF GOODS & SERVICES

Without prejudice to the Customer's rights under clause 18, if the Customer does not inform Cutler in writing of any fault or defect in Goods or Services or other non-compliance with these Sales Terms within forty-eight (48) hours of delivery or collection of Goods, the Customer is deemed to accept the Goods and Services as being in full compliance with these Sales Terms.

### 14. PRICE AND INVOICING

- 14.1. The Customer must pay the Price specified in the Invoice. Unless otherwise stated on the Invoice, the Price includes GST and associated costs.
- 14.2. The Price will be calculated as:
  - 14.2.1. the amount for the Goods or Services (or both) as set out in:
    - 14.2.1.1. the Quote (if applicable);
    - 14.2.1.2. where no Quote has been provided, Cutler's usual prices for the Goods and/or Services as described in the Order, the Customer Price List; and/or
  - 14.2.2. together with any Additional Charges; or as otherwise agreed by Cutler and the Customer.
- 14.3. The Price is payable upon an Invoice or Invoices being issued by Cutler to the Customer.
- 14.4. Cutler may, in its absolute discretion, issue Invoices to the Customer:
  - 14.4.1. prior to commencing the provision of the Goods or Services; or
  - 14.4.2. before the Order is completed; or
  - 14.4.3. upon completion of the provision of the Goods or Services, or any time after such completion; or
  - 14.4.4. at any of the above times.

### 15. PAYMENT

- 15.1. Unless otherwise agreed in writing by the parties, the Price, and any other amount payable, must be paid in full by the Customer to Cutler by the last day of the calendar month following the month of the Invoice.
- 15.2. Payments to Cutler:
  - 15.2.1. must be paid in Australian Dollars only; and
  - 15.2.2. may be paid in cash, credit card, or electronic funds transfer.
- 15.3. Payments made by credit card may be subject to a surcharge.
- 15.4. The Customer and Cutler agree to comply with their obligations in relation to GST under the GST Law.

### 16. DEFAULT IN PAYMENT

- 16.1. If the Customer fails to make any payment to Cutler when due:
  - 16.1.1. Cutler may charge interest on all overdue amounts at a rate equivalent to the ANZ Bank overdraft rate on unsecured overdrafts exceeding \$100,000, plus 2%; and
  - 16.1.2. Cutler may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- 16.2. All costs and expenses associated with collecting overdue amounts, including but not limited to legal fees and internal costs and expenses of Cutler are, payable by the Customer as a debt due and payable under these Sales Terms.

### 17. AUSTRALIAN CONSUMER LAW

- 17.1. Cutler and the Customer acknowledge that if, and to the extent that, the Australian Consumer Law applies to the supply of Goods or Services by Cutler to the Customer, Cutler makes the following statement:

"Our goods come with guarantees that cannot be excluded

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under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”

- 17.2. For the purposes of the statement in clause 17.1, “our” means Cutler and “you” means the Customer.

### 18. WARRANTIES

- 18.1. Without limiting:
- 18.1.1. any Specialist Cutler Warranty that may be applicable; or
- 18.1.2. the Australian Consumer Law or any other statutory obligations relating to the supply of goods and services,
- Cutler additionally warrants to the Customer that:
- 18.1.3. Goods are free from defects in workmanship and materials; and
- 18.1.4. Services are provided with due care and skill, for a period of 12 months from the date of purchase by the end user (**warranty period**).
- 18.2. Subject to clause 18.3, if the Goods fail for any reason within the warranty period, Cutler will:
- 18.2.1. repair or replace the Goods free of charge; or
- 18.2.2. re-perform the Services free of charge, (as the case may be).
- 18.3. The warranty referred to in clause 18.2 is subject to the following conditions and limitations:
- 18.3.1. Failure of the Goods or Services must not be due to any misuse, improper installation or other abuse, damage or misuse by the end user or the Customer or its agents, employees, suppliers or contractors;
- 18.3.2. Failure of the Goods or Services must not be due to any environmental factor relating to the storage, use or transport of the Goods by the end user, the Customer or its agents, employees, suppliers or contractors;
- 18.3.3. Where Cutler supplies Goods on a “Free on Board (FOB)” or “Free Carrier FCA” basis, Cutler will not be responsible for damage or Loss caused during freight, shipping and delivery;
- 18.3.4. The matters set out in clause 22 (Specialist Inks).
- 18.4. To make a warranty claim, the Customer must contact Cutler to:
- 18.4.1. report the fault and provide all information that may be reasonably requested by Cutler including photographs; and
- 18.4.2. arrange delivery of the Goods to Cutler or an inspection of the Goods on site by Cutler; and
- 18.4.3. provide proof of purchase from Cutler, if reasonably requested by Cutler.
- 18.5. Cutler will assess the Goods or Services subject of the warranty claim, and in Cutler’s sole discretion it is determined:
- 18.5.1. that there is a defect in Goods or Services covered by this warranty, the Customer will not be responsible for costs associated with inspection, labour, parts or delivery costs in repairing or replacing the Goods or re-performing the Services;
- 18.5.2. if Cutler determines that there is not a defect in the Goods or Services which is covered by this warranty, Cutler reserves the right to invoice the Customer for any reasonable costs incurred by Cutler in relation to the Customer’s claim, including attending an inspection, parts, labour and delivery costs.
- 18.6. Apart from:
- 18.6.1. the applicable consumer guarantees under the Australian Consumer Law; and
- 18.6.2. any Specialist Cutler Warranty provided to the Customer,
- all other warranties express or implied and whether arising by virtue of statute or otherwise are excluded.

### 19. POST-DECORATION PROCESSING BY CUSTOMER OR THIRD PARTY

- 19.1. Any post-decoration processing of the Goods by the Customer or a third party, is at the Customer’s own risk.
- 19.2. Cutler accepts no responsibility for any Claims arising from metal strike or any other mechanical damage arising in connection with any post-decoration filling process conducted by the Customer or a third-party.

### 20. EXCLUSIONS AND LIMITATION OF LIABILITY

- 20.1. The Customer expressly agrees that use of the Goods and Services is at the Customer’s risk.
- 20.2. All information and samples provided by Cutler in relation to the Goods or Services are approximations only and small variances will not entitle the Customer to reject the Goods or Services or make a Claim in respect of them.
- 20.3. Any suggestion given by Cutler to the Customer regarding possible third-party co-packers of Goods or Services is given in good faith and is believed to be appropriate and reasonable at the time it is given. Cutler does not accept any liability or responsibility for any Loss suffered as a result of the Customer’s reliance on such suggestion. It is a matter for the Customer to select its own third-party co-packers, as it sees fit.
- 20.4. To the maximum extent allowed by law, Cutler’s liability for negligence or any breach of this agreement is limited (at Cutler’s option) to:
- 20.4.1. Cutler re-supplying the Goods or Services in question; or
- 20.4.2. Cutler refunding the Price paid for the Goods or Services in question.
- This clause 19 does not exclude or limit the application of any provision of any statute (including the Australian Consumer Law) where to do so would contravene that statute or cause any part of this clause to be void.

### 21. INDIRECT OR CONSEQUENTIAL LOSS

- 21.1. Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

### 22. SPECIALIST INKS

- 22.1. This clause does not exclude or limit the application of any provision of any statute (including the Australian Consumer Law) where to do so would contravene that statute or cause any part of this clause to be void.
- 22.2. If the Customer instructs Cutler to use Specialist Inks in any Goods or Services supplied by Cutler, the following additional terms apply:
- 22.2.1. The Customer acknowledges that there are inherent risks in the manufacturing process of applying Specialist Inks to glass, and that such risks cannot be eliminated.
- 22.2.2. Under no circumstances will Cutler be liable or responsible for any loss, damage, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any damage, defect, deficiency or discrepancy to the Goods that involve the use and application of Specialist Inks.
- 22.2.3. Any comment, suggestion, information, or assistance given by Cutler in relation to the application of Specialist Inks to Goods, is given by Cutler in good faith and is believed to be accurate, appropriate and reliable at the time it is given. Cutler does not accept any liability or responsibility for any Loss suffered as a result of the Customer’s reliance on such comment, suggestion, information or assistance.
- 22.2.4. Before it elects to use Specialist Inks, the Customer acknowledges that it has undertaken its own investigations and risk assessment to determine if the Specialist Inks are appropriate for use on the Goods or as part of packaging on any materials used as part of the Goods or Services; and
- 22.2.5. The Customer accepts all and any risk, Loss or damage whatsoever for the use of Specialist Inks in connection with the Goods or Services.

### 23. GUARANTEES, LIENS, CHARGES

- 23.1. The Customer hereby charges any real or personal property owned now or in the future by the Customer in favour of Cutler, in support of the Customer’s payment obligations

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- under this agreement, and Cutler may register a permissive caveat over any such real property.
- 23.2. Cutler may at any time request from the Customer such security or additional security, or third-party guarantees, to better secure the Customer's payment obligations to Cutler. If the Customer is a natural person and the Goods are acquired for personal, domestic or household use, Cutler is only entitled to reasonable security. The parties agree that there is a rebuttable presumption that any security requested by Cutler is reasonable.
- 23.3. Cutler's rights under this clause 22 remain in force following termination of this agreement and until all outstanding amounts under these Sales Terms are paid by the Customer.
- 24. RETENTION OF TITLE**
- 24.1. Title in the Goods supplied to the Customer is retained by Cutler until all money due and payable by the Customer for those Goods, has been paid.
- 24.2. Prior to title in the Goods passing to the Customer, the Customer:
- 24.2.1. holds the Goods and any Processed Goods as bailee and fiduciary agent of Cutler;
- 24.2.2. must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by Cutler; and
- 24.2.3. must ensure that, at all times, the Goods and such part of the Processed Goods are properly stored, protected, readily identifiable and insured.
- 24.2.4. subject to, and in accordance with the PPSA, agrees Cutler may keep or resell any of the Goods repossessed.
- 24.3. The Customer must not allow any person to have or acquire any security interest in the Goods.
- 24.4. The Customer may only use or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of the Customer's normal business.
- 24.5. The Customer may sell or deal in the ordinary course of business with the Goods, such part of the Processed Goods or any Accession provided that:
- 24.5.1. any such sale or dealing is at arms' length and on market terms; and
- 24.5.2. the Customer holds the proceeds of any sale of or dealing in the Goods on trust for Cutler in a separate identifiable account as the beneficial property of Cutler and the Customer must pay such amount to Cutler on demand.
- 24.6. The Customer grants an irrevocable licence to Cutler and any person authorised by Cutler to enter upon any premises where the Goods, Processed Goods or Accessions may be placed or stored to retake possession of the Goods, Processed Goods or Accessions.
- 25. PPSA**
- 25.1. Expressions defined in the PPSA have the same meaning when used in these Sales Terms.
- 25.2. These Sales Terms constitute a Security Agreement under the PPSA.
- 25.3. Where Goods are supplied by Cutler to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Cutler in respect of those Goods, the Customer acknowledges that Cutler has a right to register and perfect a personal property security interest. The Customer consents to Cutler registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by Cutler to facilitate registration or to improve the security position of Cutler.
- 25.4. The Customer must pay Cutler all costs and expenses incurred or payable by Cutler for registering, maintaining or releasing any security interest in connection with these Sales Terms, or recovery of the Price or any other amounts due or in otherwise enforcing Cutler's rights against the Customer, such costs may be invoiced or debited against the Customer's credit account;
- 25.5. The Customer:
- 25.5.1. waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement
- relating to a security interest created under these Sales Terms; and
- 25.5.2. contracts out of its rights to receive any other notice or statement under any other provision of the PPSA.
- 25.6. To the fullest extent permitted by the PPSA, the parties agree to contract out of the following provisions of the PPSA: sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) do not apply to these Sales Terms.
- 26. INTELLECTUAL PROPERTY**
- 26.1. The Customer warrants that any Specifications, Customer-Supplied Goods, materials or instructions given to Cutler to provide the Goods or Services do not infringe any Intellectual Property Rights owned by any third party.
- 26.2. The Customer indemnifies Cutler from and against all Claims and Loss arising from a breach of the warranty in clause 26.1.
- 27. DEFAULT BY CUSTOMER**
- 27.1. Each of the following occurrences constitutes an event of default:
- 27.1.1. the Customer breaches any term of these Sales Terms (including non-payment to Cutler when due), and fails to remedy that breach within seven (7) days of being given notice by Cutler to do so;
- 27.1.2. the Customer being a natural person, commits an act of bankruptcy within the meaning of Bankruptcy Law;
- 27.1.3. the Customer is insolvent within the meaning of the Corporations Act and/or is subject to a petition, order, or meeting called, for the Customer to be wound up, deregistered or dissolved;
- 27.1.4. a receiver or administrator under Part 5.3A of the Corporations Act is appointed to all or part of the Customer's property;
- 27.1.5. the entering of a scheme of arrangement (other than for re-structuring) by the Customer for the benefit of creditors;
- 27.1.6. the Customer ceases or threatens to cease the carrying on its business.
- 27.2. Where an event of default occurs, Cutler may:
- 27.2.1. terminate any or all Orders and credit arrangements (if any) with the Customer;
- 27.2.2. refuse to deliver Goods or provide further Services;
- 27.2.3. retain all money paid by the Customer on account of Goods delivered or Services or otherwise.
- 27.3. On the occurrence of an event of default by the Customer, the full amount specified in the Invoice, Additional Charges, or any other monies owed, will become immediately due and payable to Cutler.
- 28. TERMINATION**
- In addition to Cutler's rights under clause 27.2.1, termination may occur as follows:
- 28.1. by Cutler, upon 7 days' written notice to the Customer;
- 28.2. by the Customer, if Cutler breaches any of these Sales Terms and fails to remedy such breach within 21 days of being given written notice by the Customer to do so; or
- 28.3. by mutual agreement by Cutler and the Customer.
- 29. INDEMNITY AND RELEASE**
- 29.1. The Customer releases and indemnifies, and keeps indemnified Cutler, its officers, employees, contractors and agents in respect of any Claims against Cutler or, for which Cutler is liable, in connection with:
- 29.1.1. the Customer's breach of these Sales Terms;
- 29.1.2. use of the Goods by Cutler's workers, agents and contractors on any premises or worksite which is owned or controlled by the Customer.
- 29.2. This provision remains in force after the termination of this agreement.
- 30. FORCE MAJEURE**
- 30.1. If circumstances beyond Cutler's control prevent or delay its provision of the Goods or Services, Cutler is relieved of any obligation to provide the Goods or Services while those circumstances continue. Cutler may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

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30.2. Circumstances beyond Cutler's control include, but are not limited to, unavailability of materials or components, fire, flood, storm or other severe weather condition, pandemic including the Covid-19 pandemic declared by the World Health Organisation in March 2020, lockdown or quarantine ordered by a government agency, transport difficulties and failures or malfunctions of computers or other information technology systems.

### 31. GENERAL

- 31.1. Any notice given under these Sales Terms must be in writing and be hand delivered, sent by prepaid post, or email to the address, shown at the commencement of this agreement (or otherwise notified) and will be deemed given:
- 31.1.1. in case of hand delivery, on the date of delivery; or
- 31.1.2. in the case of prepaid post, two (2) business days after being sent by prepaid post and deemed to be served on the second business day following the day on which it was posted; or
- 31.1.3. in case of email, evidence that the email has been successfully sent will be prima facie evidence of the addressed recipient's receipt of that email at the time of dispatch.
- 31.2. This agreement is subject to the laws of South Australia and the parties submit themselves to the jurisdiction of the Courts of South Australia and any competent appellate courts.
- 31.3. No rule of construction or interpretation will be construed to disadvantage any party because that party was responsible for its preparation or drafting.
- 31.4. The failure of a party to insist on any one or more instances upon the performance of any provisions of these Sales Terms will not be construed as a waiver or relinquishment of that party's rights to future performance of such provision.
- 31.5. Any provisions in these Sales Terms which are unenforceable, illegal or otherwise invalid, will be read down to the minimum extent necessary to achieve validity, if applicable, or if not applicable be severed, and without affecting the remaining provisions of these Sales Terms.
- 31.6. This agreement and any written variations agreed in writing by Cutler represent the whole of the agreement between the parties.
- 31.7. These Sales Terms supersede all oral and written negotiations and communications on and on behalf of the parties.
- 31.8. In entering into these Sales Terms, the Customer has not relied on any warranty representation or statement, whether written or oral, made by Cutler or any of its employees or agent relating to or in connection with the subject matter of these Sales Terms.
- 31.9. These Sales Terms must not be amended or varied unless it is in writing and executed by both parties.

### 32. DEFINITIONS

In these Sales Terms:

- 32.1. **Accession** means any Goods which are affixed to other goods;
- 32.2. **Additional Charges** means fees or charges for additional work performed or expenses incurred at the Customer's request or as reasonably required as a result of the Customer's conduct, calculated in accordance with the Cutler's then current prices;
- 32.3. **Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).
- 32.4. **Claims** means and includes any claim, notice, demand, action, inaction, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, and whether involving a third party or a party to this agreement or otherwise;
- 32.5. **Cutler** means Cutler Brands Pty Ltd ABN 71 050 166 160 and any related body corporate (within the meaning of s 50 of the Corporations Act);
- 32.6. **Corporations Act** means the *Corporations Act 2001* (Cth);
- 32.7. **Credit Application** means the document titled "Application for Credit" executed by the Customer;
- 32.8. **Credit Limit** means the maximum amount of credit which Cutler agrees to grant to the Customer, as determined by the Cutler in its sole and unfettered discretion.
- 32.9. **Customer** means a person named as the Customer in the Quote;
- 32.10. **Customer Price List** means any document titled "Price List" or similar which is provided by Cutler to the Customer from time to time.
- 32.11. **Customer-Supplied Products** means all goods, materials and substrates which are provided to Cutler by or on behalf

- of the Customer and on which, or using which, Cutler is to perform a Service. By way of example only, glass bottles;
- 32.12. **Delivery Point** means the location of the Customer's premises where Goods will be delivered, as contemplated in clause 11.2;
- 32.13. **Goods** means all goods and chattels described in the Quote and, where the context allows, includes Supplied Goods;
- 32.14. **GST** means goods and services tax under the GST Law;
- 32.15. **GST Law** means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth);
- 32.16. **Guarantee and Indemnity** means the guarantee and indemnity given by the Guarantor to Cutler in the document titled 'Guarantee and Indemnity and annexed hereto;
- 32.17. **Guarantor** means any of the following as applicable to the Customer:
- 32.17.1. any and all directors of the Customer;
- 32.17.2. the person who is the sole trader, if the Customer is a sole trader;
- 32.17.3. any and all partners if the Customer is a partnership; or
- 32.17.4. any other related party of the Customer required by Cutler to execute the Guarantee and Indemnity;
- 32.18. **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- 32.19. **Insolvency Event** means any of the following events concerning a person (including a body corporate):
- 32.19.1. if an administrator, liquidator, receiver, receiver and manager, or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the person;
- 32.19.2. if the person becomes bankrupt;
- 32.19.3. if a controlling trustee is appointed to, or over, any of the property or undertaking of the person;
- 32.19.4. if the person or the person's property becomes subject to a personal insolvency arrangement under Part X of the Bankruptcy Act or a debt agreement under Part IX of the Bankruptcy Act;
- 32.19.5. if the person is unable to pay its debts as and when they fall become due and payable;
- 32.19.6. if the person ceases to carry on a business;
- 32.20. **Invoice** means a GST-Law compliant tax invoice issued by Cutler Brands to the Customer.
- 32.21. **Loss** includes, but is not limited to, costs (including party to party legal costs and Cutler's legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- 32.22. **Order** means the written notification of the Customer to Cutler that the Quote has been accepted;
- 32.23. **Pick-up Point** means Cutler's premises at Kilkenny, as contemplated in clause 10.3;
- 32.24. **Pick-up Time** means, unless otherwise agreed, within 7 days of notice from Cutler that the Goods are ready for collection, as contemplated in clause 12.2;
- 32.25. **PPSA** means Personal Properties Securities Act 2001 (Cth);
- 32.26. **Price** means the price referred to in clause 14;
- 32.27. **Processed Goods** means Goods which, after delivery to the Customer, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with so that their identity is lost in the product mass;
- 32.28. **Quote** means all the quotes provided by Cutler to the Customer in which the Customer is named, the Quote number is enumerated, the details, pricing and timing of the Goods and/or Services are provided, and in which some or all the Specifications are accepted;
- 32.29. **Sales Terms** means these terms and conditions comprising Clauses 1 – 33 inclusive, as may be varied by time to time and provided to the Customer;
- 32.30. **Services** means any service which may be provided to the Customer by Cutler under this agreement including, designing, manufacturing, repairing, treating, advice about the Goods;
- 32.31. **Specifications** means any design, schematic, drawing, particulars of weights or dimensions or constituent products for Goods or relating to the Goods or Services referred to in the Quote which have been supplied by the Customer to be used by Cutler in the course of providing the Services as well as full particulars of any Supplied Goods;
- 32.32. **Specialist Cutler Warranty** means any additional written warranty provided by Cutler to the Customer in relation to the Goods; and
- 32.33. **Specialist Inks** means any specialist ink system nominated by Cutler from time to time including, but not limited to, precious metal, Medium Fire Thermal, Ultra Violet Cured or Ambient Cured used in the provision of the Goods and Services.

## Cutler Brands Sales Terms

### 33. INTERPRETATION

In these Sales Terms:

- 33.1. reference to a person includes that individual, their heirs, executors, administrators, successors and assigns of that person, corporations and associations;
- 33.2. a reference to writing includes email and other communication established through the Cutler's website (if any);
- 33.3. words importing the singular number include the plural and vice versa;
- 33.4. where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 33.5. headings are for convenience only and do not affect interpretation;
- 33.6. references to any legislation or to any provision of any legislation include any modification or re-enactment or any legislation or legislative provision substituted for, and all regulations and instruments issued under, such legislation or provision.

Cutler Brands Sales Terms

Schedule 1 – Credit Application

[insert\*]