



## TERMS AND CONDITIONS OF TRADING

### 1. Definitions

In these Terms:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act* and its associated Regulations as amended;

**Buyer** means the person, jointly and severally if more than one, acquiring goods from Airstep;

**consumer** is as defined in the ACL and in determining if Buyer is a consumer, the determination is made if Buyer is a consumer under the Contract;

**Contract** means any contract for the provision of goods by Airstep to Buyer;

**Airstep** means Airstep Australia Pty Ltd (ACN 144 967 215);

**goods** means goods supplied by Airstep to Buyer;

**GST** means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* and its associated Regulations as amended;

**PPSA** means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

**Quote** means any written or verbal quote provided by Airstep to Buyer concerning the proposed supply of goods;

**Terms** means these terms and conditions of trading, as amended or updated from time to time by Airstep.

### 2. Basis of Contract

2.1 Unless otherwise agreed by Airstep in writing, these Terms apply exclusively to every Contract and cannot be varied or replaced by any other terms including Buyer's terms and conditions of purchase (if any).

2.2 Quotes are:

- (a) valid for 30 days, are an invitation to treat only, and are only valid if in writing; and
- (b) based on current material and procurement costs.

2.3 The Terms may include additional terms in Airstep's Quote, which are not inconsistent with the Terms.

2.4 The Contract is accepted by Airstep when it confirms its acceptance, in writing or electronic means, of a signed Quote from Buyer or provides Buyer with the goods.

2.5 Airstep may refuse to accept any offer.

2.6 Buyer must provide Airstep with its specific requirements and specifications, if any, in relation to the goods. Once accepted, Airstep's Quote shall be deemed to interpret correctly Buyer's required specifications.

2.7 Airstep may vary or amend these Terms by written notice to Buyer at any time. Any variations or amendments will apply to Quotes or orders placed after the notice date.

### 3. Pricing and Payment

3.1 Prices quoted for the supply of goods exclude GST and exclude freight, insurance and delivery charges, which are additionally at Buyer's cost.

3.2 The costs of artwork, original blocks and stereotypes for flexographic printing, photographic positives and negatives for gravure printing, and the etching of gravure cylinders and proofs will be quoted separately, the costs of which will be borne by Buyer.

3.3 Any preliminary work and/or work produced in an experimental way at Buyer's request will be considered an order and charged to Buyer.

3.4 If Buyer requests an alteration or variation to the Contract, or if Buyer's specifications or instructions contain any errors or omissions which result in additional work, Airstep may seek to alter the price to account for the alteration, variation or additional work by giving notice to Buyer, and Buyer may:

- (a) accept the new price and continue with the Contract; or

- (b) refuse the new price and cancel the Contract insofar as it relates to the subject of the requested alteration or variation or additional work required to be undertaken.

3.5 Where there is any change in the costs incurred by Airstep in relation to the goods, Airstep may seek to vary its price to take account of any such change by notifying Buyer and Buyer may:

- (a) accept the new price and continue with the Contract; or
- (b) refuse the new price and cancel the Contract insofar as it relates to the subject of the requested variation.

3.6 If credit is offered, Buyer must pay for all goods in full within 30 days of the date of Airstep's invoice, unless other payment terms are previously agreed in writing.

3.7 If no credit is offered, Buyer must:

- (a) pay the deposit specified on the Quote immediately upon placing its order with Airstep; and
- (b) pay the balance specified on the Quote prior to dispatch of the goods.

3.8 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

3.9 Payment terms may be revoked or amended at Airstep's sole discretion immediately upon giving Buyer written notice and such revocation or amendment will apply to any orders placed by Buyer after such notice.

3.10 The time for payment is of the essence.

### 4. Rebates and Discounts

4.1 Any rebate arrangement, discount structure or other allowance applicable to a Contract (**Allowance**) will be set out from time to time in writing between Airstep and Buyer.

4.2 Buyer acknowledges and agrees that Buyer's eligibility to receive or account for any Allowance:

- (a) is solely at Airstep's discretion, which may be varied or revoked at any time, with such variation or revocation applying to orders placed by Buyer after such notice;
- (b) is strictly subject to Buyer making payment for the goods the subject of the Contract, in full and within terms; and
- (c) is strictly subject to Buyer not having any then-present outstanding default of any of the Terms.

4.3 Buyer acknowledges and agrees that, upon the occurrence of Buyer's bankruptcy or insolvency:

- (a) Buyer's entitlement to any Allowance immediately ceases; and
- (b) any Allowance already accrued and due to be applied to Buyer's account, will be offset and applied by Airstep against moneys owing by Buyer to Airstep.

### 5. Payment Default

5.1 If Buyer defaults in payment by the due date of any amount payable to Airstep, then all money which would become payable by Buyer to Airstep at a later date, on any account, becomes immediately due and payable without the requirement of any notice to Buyer, and Airstep may, without prejudice to any of its other accrued or contingent rights:

- (a) charge Buyer interest at the rate specified in the Penalty Interest Rates Act 1983 (Vic) plus 4% for the period from the due date until the date of payment in full;
- (b) charge Buyer for, and Buyer must indemnify Airstep from, all of Airstep's expenses and costs (including without limitation all legal costs and expenses on an indemnity basis) resulting from the default, in taking action to enforce compliance with the Contract or these Terms, recovering any goods, or recovering any sum due;
- (c) cease or suspend supply of any further goods to Buyer; and
- (d) by written notice to Buyer, terminate any uncompleted Contract with Buyer.

- 5.2 On receipt of any money due to Airstep by Buyer under clause 5.1, Airstep may deduct any money owing under clause 5.1(b), followed by any interest payable under clause 5.1(a) prior to putting the balance towards satisfying the outstanding amount under clause 5.1.
- 5.3 Subject to any applicable statutory stay of proceedings, and without prejudice to Airstep's other remedies at law, clauses 5.1(c) and 5.1(d) may also be relied upon, at Airstep's option:
- where Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - where Buyer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of Buyer.
- 6. Passing of Property & Risk**
- 6.1 Until Airstep receives full payment in cleared funds for all goods supplied by it to Buyer, and for all other amounts owing to Airstep by Buyer:
- title and property in all goods remains vested in Airstep and does not pass to Buyer;
  - Buyer must hold the goods as fiduciary bailee and agent for Airstep;
  - Buyer must keep the goods separate from its own goods and maintain Airstep's labelling and packaging;
  - Buyer must to hold the proceeds of any sale of the goods on trust for Airstep in a separate account however failure to do so will not affect Buyer's obligation to deal with the proceeds as trustee; and
  - in addition to its rights under the PPSA, Airstep may without notice, enter any premises where it suspects the goods are and remove them and for this purpose Buyer irrevocably licences Airstep to enter such premises and indemnifies Airstep from and against all costs, claims, demands or actions by any party arising from such action.
- 6.2 Airstep will exercise its right of entry (including the use and extent of force) in accordance with applicable laws.
- 6.3 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to Buyer immediately upon dispatch of the goods from Airstep's premises.
- 6.4 The goods are sold to Buyer on the basis that Buyer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 6.5 Buyer assumes all risk and liability for loss, damage or injury to persons or to property of Buyer, or third parties arising out of the use, installation or possession of any of the goods sold by Airstep, unless recoverable from Airstep on the failure of any statutory guarantee under the ACL.
- 7. Personal Property Securities Act**
- 7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
  - these Terms are a security agreement and Airstep has a Purchase Money Security Interest in all present and future goods supplied by Airstep to Buyer and the proceeds of the goods;
  - the security interest is a continuing interest irrespective of whether there are monies or obligations owing by Buyer at any particular time; and
  - Buyer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Airstep on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from Airstep's premises and not at any later time.
- 7.4 Where permitted by the PPSA, Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (removal of accession), 118 (enforcement of security interests in accordance with land law decisions), 121(4) (enforcement of security interests in liquid assets), 130 (disposal of collateral), 132(3)(d) (amounts paid to other secured parties), 132(4) (statement of account in respect of seized collateral), 135 (retention of collateral) and 157 (notice to grantors) of the PPSA.
- 7.5 Airstep and Buyer contract out of and nothing in the provisions of sections 96 (retention of accession), 125 (disposal or retention of collateral), 129 (disposal by purchase), 142 (redemption of collateral) and 143 (reinstatement of security agreement) of the PPSA will apply to these Terms.
- 7.6 To the extent permitted by the PPSA, Buyer agrees that:
- the provisions of Chapter 4 of the PPSA which are for the benefit of Buyer or which place obligations on Airstep will apply only to the extent that they are mandatory or Airstep agrees to their application in writing; and
  - where Airstep has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.7 Buyer must immediately upon Airstep's request:
- do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
  - procure from any person considered by Airstep to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Airstep may at any time require.
- 7.8 Airstep may allocate amounts received from Buyer in any manner Airstep determines, including in any manner required to preserve any Purchase Money Security Interest it has in the goods.
- 7.9 For the purposes of section 275(6) (response to request for information) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.
- 8. Delivery**
- 8.1 Any date specified by Airstep for delivery of the goods is an estimate only and is not a contractual commitment. Airstep will use reasonable endeavours to meet any estimated dates for delivery of goods but will not be liable for any loss or damage suffered by Buyer or any third party for failure to meet any estimated date.
- 8.2 Unless otherwise agreed, delivery of the goods is deemed to occur upon dispatch of the goods from Airstep's premises.
- 8.3 If the goods are to be collected from Airstep's premises, Buyer must arrange for collection of the goods within 7 days of notification that the goods are ready. If Buyer does not collect the goods within this time, Buyer will be deemed to have taken delivery from such date and will be liable for storage charges payable monthly on demand.
- 8.4 If requested, Airstep will arrange for delivery of the goods to Buyer at Buyer's cost, and designate the route and means of transportation.
- 8.5 A completed drivers manifest or delivery docket whether signed by the driver or by Buyer will be proof of delivery of goods invoiced.
- 8.6 Buyer authorises Airstep to subcontract delivery in its sole discretion.
- 8.7 Airstep may make part delivery of the goods and Airstep may invoice Buyer for the goods provided.

- 8.8 Buyer must provide reasonable and proper access to the location specified for delivery. Any extra carrier charges due to difficult access, wrong instructions provided by Buyer, frustrated delivery etc, will be charged to Buyer at cost plus GST plus a 10% service fee.
- 8.9 Buyer indemnifies Airstep against any loss or damage suffered by Airstep, its subcontractors or employees, as a result of delivery, except where Buyer is a consumer and Airstep has not used due care and skill.
- 8.10 Reasonable endeavours will be made to deliver the exact quantity of goods ordered, however, Buyer will be required to accept and pay for goods within the following limits of weight or equivalent quantity:-
- |                                 |       |
|---------------------------------|-------|
| 255kg or less                   | ±25%  |
| 255kg but less than 510kg       | ±20%  |
| 510kg but less than 1020kg      | ±15%  |
| 1020kg but less than 5080kg     | ±10%  |
| 5080kg but less than 10,160kg   | ±7.5% |
| 10,160kg but less than 25,400kg | ±5%   |
| 25,400kg and over               | ±3%   |

## 9. Acknowledgements

- 9.1 Buyer acknowledges that:
- it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Airstep in relation to the goods or their use or application;
  - it has not made known, either expressly or by implication, to Airstep any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods are suitable for Buyer's use;
  - yields stated are approximate only and are such as Airstep expects to obtain on a test; and
  - it has the sole responsibility of complying with the requirements of any applicable legislation relating to the marketing, labelling and packaging of its goods.

## 10. Graphic Matter

- 10.1 Airstep is not responsible for errors or omissions in work previously approved by Buyer. Due diligence will be exercised in reproducing graphic matter within the capabilities of the printing process selected.
- 10.2 Costs incurred through Buyer electing to approve initial reproduction on the printing press or through Buyer's variation from normal interpretation of or alternatives to graphic matter shall be charged to Buyer.

## 11. Intellectual Property

- 11.1 All printing, embossing and similar surfaces, matrices, photographic negatives and positives and dies supplied by Airstep remain the exclusive property of Airstep. All sketches and dummies submitted by Airstep on a speculative basis remain Airstep's property. Buyer acknowledges that it has no proprietary right or interest in Airstep's Intellectual Property.
- 11.2 All other preparatory work when charged to and paid for by Buyer shall remain Buyer's property.
- 11.3 Buyer must not register or record or attempt to register or record anywhere in the world all or any part of the Intellectual Property or anything similar to or derived from the Intellectual Property, or aid or abet anyone else to do so.
- 11.4 Buyer must not at any time create, sell, manufacture or have manufactured any goods using or taking advantage of the Intellectual Property.
- 11.5 Buyer must not copy, reproduce or manufacture any item or design owned or supplied by Airstep.
- 11.6 Any improvement or modification to or derivation or discovery from any part of the information comprised in Airstep's Intellectual Property whether attributable in whole or part to Buyer, will become and remain Airstep's property.

- 11.7 Buyer hereby assigns and conveys to Airstep any intellectual property rights that Buyer may create or acquire in any improvement or modification to or derivation or discovery from Airstep's Intellectual Property.

## 12. Buyer's Property

- 12.1 Buyer's property or materials supplied by or on behalf of Buyer (including goods in transit) ("Buyer's Property") will be held at Buyer's risk. Airstep will take reasonable care but will not be held responsible for loss or damage to Buyer's Property or for its insurance.
- 12.2 Buyer's Property when received will be checked in accordance with Airstep's usual practice. Additional checking required by Buyer will be chargeable upon prior written notice..
- 12.3 Buyer shall bear the risk and costs of all spoilage of Buyer's Property unless gross carelessness by Airstep is proved.
- 12.4 No responsibility is accepted for imperfect work caused by defective or unsuitable Buyer's Property supplied by Buyer. Airstep will take reasonable care to ascertain defects therein and if such are observed will seek Buyer's instructions.
- 12.5 Necessary changes to preparatory materials supplied by Buyer will be chargeable.
- 12.6 Airstep shall have a general lien on all Buyer's Property in its possession and may, after 14 days' notice, dispose of such Buyer's Property and apply the proceeds towards any unpaid debts owed by Buyer.

## 13. Liability

- 13.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods, the Contact does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, or any contractual remedy for their failure.
- 13.2 If Buyer on-supplies the goods to a consumer and:
- the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) (limitation of liability of manufacturer to seller in certain circumstances) of the ACL is the absolute limit of Airstep's liability to Buyer;
  - the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 (indemnification of suppliers by manufacturers) of the ACL is the absolute limit of Airstep's liability to Buyer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by Buyer or any third party.

- 13.3 If clause 13.2 or 13.3 do not apply, then other than as stated in the Terms or any written warranty statement Airstep is not liable to Buyer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by Buyer or any third party.
- 13.4 Airstep is not liable for any direct, indirect or consequential losses or expenses suffered by Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 13.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any sale of goods legislation which cannot be so excluded, restricted or modified.
- ## 14. Returns
- 14.1 Subject to clauses 8.9, 14.3 and 14.4, Airstep will not be liable for any shortages, damage or non-compliance with the Contract unless:
- Buyer notifies Airstep with full details and description within 30 days of delivery; and
  - Airstep is given an opportunity to inspect the goods before any further dealing.

- 14.2 If Buyer fails to give notice in accordance with clause 14.1, then Buyer is deemed to have accepted the goods.
- 14.3 If Airstep accepts any claim for shortage, damage or non-compliance with the Contract, Airstep may at its option replace the goods or refund the price of the goods.
- 14.4 If Buyer is a consumer, nothing in this clause 12 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 14.5 Goods will be deemed to comply with the specifications of the Contract if they are manufactured, made, cut, finished and/or supplied to dimensions and measurements that are within acceptable industry tolerances.
- 14.6 The goods may vary from product to product, including without limitation as to their colour, finish and design. Any sample provided is intended as a general guide only. To the extent permitted by law, the provision of a sample does not constitute a supply of goods by sample and Airstep is not liable to Buyer for any variation in colour, finish and/or design of the goods.
- 14.7 Unless required under the ACL, Airstep does not accept any liability or responsibility should the colour, design, measurement and/or dimensions of the goods vary from those contained in any catalogue, brochure or other promotional or information document, which is intended as a guide only.
- 15. Cancellation**
- 15.1 If Airstep is unable to deliver the goods, Airstep may cancel Buyer's order (even if it has been accepted) by written notice and refund to Buyer any payment Buyer has made to Airstep for the relevant goods which will not be supplied.
- 15.2 No purported cancellation of an order or any part thereof by Buyer is binding on Airstep once the order has been accepted.
- 15.3 If Buyer cancels its order after acceptance by Airstep, Buyer must indemnify for Airstep for all costs incurred and work performed up to the date of cancellation.
- 16. Force majeure**
- 16.1 Neither Airstep or Buyer are liable for breach of the Contract if and to the extent that fulfilment of a term or condition has been prevented, hindered or delayed by force majeure, and in such event that time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.
- 16.2 "Force majeure" means any event or circumstances beyond Airstep's immediate control, including without prejudice to the generality of the foregoing, strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to natural forces, fire, flood, explosion, and compliance with orders or requests of any national or local authority.
- 16.3 Nothing in this clause 16 relieves a party of the obligation to pay money.
- 17. Miscellaneous**
- 17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 17.2 Airstep's failure to enforce any of these Terms shall not be construed as a waiver of any of Airstep's rights.
- 17.3 If any of the Terms are unenforceable it shall be read down to be enforceable or, if it cannot be read down, it shall be severed from these Terms without affecting the enforceability of the remaining terms.
- 17.4 A notice must be in writing and handed personally or send by facsimile, email or prepaid post to the last known address of the addressee. Notices send by prepaid post are deemed to be received 2 days after posting. Notices sent by facsimile or email are deemed to be received upon the sender's machine confirming successful transmission.