Terms and Conditions of Sales

These Terms and Conditions apply to the following members of the Abbe Group;
Abbe Corrugated Pty Ltd ACN 052 244 443,
Abbe NSW Pty Ltd ACN 125 187 724,
Abbe Pty Ltd ACN 661 813 467,
Abbe Industrial Packaging Pty Ltd ACN 125 187 724,
Abbe FS Pty Ltd ACN 050 218 221,
Abbe QLD Pty Ltd ACN 615 258 234
(And/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) trading under the Abbe name.

1. Definitions

1.1 In these Terms and Conditions:
"Application" means the application by the Buyer to the Seller for commercial credit.
"Buyer" means the person placing the Order with the Seller.
"Carrier" means a carrier nominated by the Buyer and agreed to by the Seller in relation to an Order.
"Change in Control" means an occurrence where a party comes under the Control of a person who did not Control that party at the date of the contract under these Terms and Conditions.
"Contract" means the contract formed between the Seller and the Buyer in relation to an Order comprised of the documents referred to in clause 3.6.
"Control" has the meaning as defined in s 50AA of the Corporations Act 2001 (Cth).
"Delivery" means delivery in accordance with clause 5 of these Terms and Conditions.
"Goods" means any goods, products, materials, or services supplied or to be supplied by the Seller.
"Insolvency Event" means any of the following events:
1.1.1 the Buyer, being an individual, commits an act of bankruptcy or becomes insolvent;
1.1.2 a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Buyer, or the Buyer enters into a scheme of arrangement with their creditors or the Buyer is wound up;
1.1.3 the Buyer assigns any of its property for the benefit of creditors or any class of them;
1.1.4 the holder of a Security Interest takes any steps towards taking possession or takes possession of any of the assets of the Buyer, or exercises any power of sale;
1.1.5 a judgement or order is levied or enforced against the Buyer in excess of $10,000 (or the equivalent in any currency) and that judgement or order is not satisfied, quashed or stayed within 20 business days after being made;
1.1.6 any step is taken to do anything listed in the above paragraphs; and
1.1.7 any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.
"Master Agreement" means any written agreement between the Seller and the Buyer to which these Terms and Conditions are attached or which makes specific reference to the Seller's 'Standard Terms and Conditions'.
"Order" means an offer to purchase made by the Buyer either verbally, in writing or through the Website.
"Order Confirmation" means the Seller's written confirmation of the receipt of the Order (other than Orders made through the Website) and confirming to the Buyer the product, quantity, price and specifications.
"PPS Act" means the Personal Property Securities Act 2009 (Cth).
"PPS Law" means the PPS Act, and other associated legislation and regulations, as amended from time to time.
"Quotation" means a written quote by the Seller to supply a specified product to the Buyer.
"Terms and Conditions" means these Terms and Conditions as updated from time to time on the Abbe Group website or via email.
"Security Interest" means the same meaning as defined in the PPS Act.
"Seller" means the entity named in the Order placed by the Buyer or the Abbe Group member the contract is assigned to.
"Website" means the Seller's websites at www.abbe.com.au
"Website Receipt" means a receipt issued by the Seller to the Buyer recording the Order accepted by the Seller, all relevant details of the Order and the payment of all relevant sums by the Buyer.

2. Applications & Credit

2.1 The Buyer acknowledges and agrees that its Application will be subject to these Terms and Conditions. 2.2 If the Seller accepts the Buyer's Application, then these Terms and Conditions will bind the Seller and the Buyer. 2.3 The Seller's acceptance of an Application does not oblige either party to enter into any transaction with the other party.

3. Contract

3.1 The Buyer may at any time submit a request for a Quotation or an Order to the Seller.
3.2 The Seller will issue to the Buyer as soon as practicable after receipt:
3.2.1 of a request for Quotation, a written Quotation; and 3.2.2 of an Order, a written Order Confirmation.
3.3 An Order made other than through the Website is accepted when the Buyer receives from the Seller an Order Confirmation or such other written confirmation of the Order.
3.4 An order made through the Website is accepted when the Seller issues a final invoice to the Buyer, and the Buyer has paid for the Goods through the Website and is issued with a Website Receipt.
3.5 Where the Seller issues a Quotation to the Buyer, this is not an offer to sell and the Buyer must still place an Order with the Seller if the Buyer seeks to purchase Goods, which is to be accepted in accordance with sub-class 3.3 and 3.4 above.
3.6 Each time an Order is accepted a separate Contract in relation to the Goods ordered will be wholly documented by (in descending order of precedence) any Master Agreement, any specific terms agreed in writing, these Terms and Conditions and any Website Receipt.

4. Cancellation and Variation of Order

Each Contract cannot be cancelled or varied except upon terms agreed by the parties which compensate the Seller for all work done, all materials used or specially procured to the date of cancellation, and all expenses, including overheads and handling charges incurred to the date of cancellation by the Seller.

5. Delivery

5.1 The Buyer must provide a delivery address (and specific location if requested by the Seller) as part of its Order (Delivery Location). Alternatively, by agreement with the Seller, the Buyer may arrange for collection of the Goods by a Carrier.
5.2 The Buyer must ensure that the Delivery Location is accessible to the Seller. If it is not, then the Buyer must pay to the Seller its expenses associated with all costs subsequently incurred by the Seller in attempting to deliver the Goods. The Supplier may deliver the Goods in more than one batch or delivery. Where it does so, then a separate Contract will apply to each batch of Goods delivered, and clause 3.6 will apply in respect of that Contract.
5.3 The Buyer must ensure that a Carrier contacts the Seller and agrees a collection time at the Seller's nominated business premises during business hours. If the Buyer arranges delivery by a Carrier, then delivery is effected when the Carrier loads the Goods onto its vehicle at the Seller's premises.
5.4 The Seller will make all reasonable efforts to have the Goods delivered to the Buyer at the Delivery Location, on the date specified in the Contact. Subject to any terms to the contrary set out in the Master Agreement, the Seller is not liable for any failure to deliver or delay in delivery for any reason.
5.5 The Buyer acknowledges that Delivery is not contingent on the Seller identifying a representative of the Buyer at the Delivery Location, nor having any such person sign to acknowledge receipt.
5.6 The Seller will make all reasonable efforts to have the exact quantity ordered by the Buyer delivered to the Buyer, but the Buyer will accept the delivery if the quantity delivered is:
5.6.1 For orders of less than 1,000, within 20% of the quantity ordered; or
5.6.2 For orders of 1,000 or more, within 10% of the quantity ordered.

6. Price

6.1 The price of the Goods is as advised to the Buyer in writing by the Seller, or as set out in the Master Agreement. The price will be increased on account of GST and any other application sales taxes or government charges however arising.
6.2 The Seller at any time may impose, vary or remove a supply chain surcharge. This clause prevails over any fixed pricing, pricing review restrictions or other pricing provisions contained in a Master Agreement or other agreement between the parties.

7. Payment

7.1 Payment is either prepaid or where the Seller has granted the Buyer credit, payment for the Goods must be made in full (without any set off or deductions) and received by the Seller by the last business day of the month following the month of Delivery unless some later date has been agreed by the Seller in writing.
7.2 Payment is only received by the Seller when it receives cleared funds into the Seller's bank account.
7.3 Should the Buyer fail to pay any money due under these Terms and Conditions by the due date, the Buyer will be in default and the Seller may charge interest at 12% per annum calculated daily until payment in full.

8. GST

8.1 In this clause words that are defined in A New Tax System (Goods and Service Tax) Act 1999 have the same meaning as their definition in the Act.
8.2 Except as otherwise provided by this clause, all consideration payable under these Terms and Conditions in relation to any supply is exclusive of GST.
8.3 If GST is payable in respect of any supply made by the Seller under these Terms and Conditions, subject to clause 8.4 the Buyer will pay to the Seller an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration of the supply is to be provided under these Terms and Conditions.
8.4 The Seller must provide a tax invoice to the Buyer before the Seller will be entitled to payment of the GST payable under clause 8.3.

9. Website Sales

9.1 Where the Seller sells Goods to the Buyer through its Website the Buyer (and each signatory) acknowledges and agrees that:
9.1.1 each is at least 18 years of age;
9.1.2 the Seller does everything it can to carry adequate stock, but is dependent on availability of Goods from its suppliers and so may at times add and withdraw Goods by updating its Website;
9.1.3 the Seller may change the advertised price of Goods when updating the Website;
9.1.4 once an Order is submitted through the Website the Seller will commence completing the Order. If particular Goods are unavailable, then the Seller will advise the Buyer within 5 business days and arrange an alternative product or provide the Buyer with a full refund permitted by the Contract.

10. Title

10.1 The legal and equitable title to the Goods will only be transferred from the Seller to the Buyer when the Buyer has paid all monies that are owed to the Seller in respect of any ordered Goods.

10.2 The Buyer acknowledges that until the Buyer has paid all monies that are owed to the Seller on any account whatsoever, the Buyer holds the goods as fiduciary bailee for the Seller.

11. Force Majeure

The Seller is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of failure of the Supplier's machinery, failure of the Supplier's suppliers to supply, or circumstances outside the Seller's reasonable control.

12. Default

12.1 The Buyer will be in default if:
12.1.1 The Buyer materially breaches any of the Terms and Conditions;
12.1.2 Payment for the Goods has not been received by the Seller in full by the due date of payment and the amount of the payment outstanding is not the subject of a legitimate dispute;
12.1.3 An Insolvency Event occurs in relation to the Buyer; 12.1.4 The Seller forms the reasonable opinion that the Buyer's credit worthiness or credit standing detrimentally alters from that indicated in its Application;
12.1.5 The Buyer undergoes a Change in Control without the prior written consent of the Seller, except to the extent that a Change in Control occurs as permitted by the Master Agreement.
12.2 If one of the events described in clauses 12.1.1 to 12.1.5 inclusive occurs, the Seller may, subject to clause 12.3, take any one or more of the following actions;
12.2.1 Treat the whole of the Contract and any other Contract with the Buyer as repudiated and sue for breach of contract;
12.2.2 Refuse to supply any Goods to the Buyer;
12.2.3 Claim the return for any Goods in the Buyer's possession where title has not passed to the Buyer;
12.2.4 Withdraw or vary credit the Seller has provided to the Buyer;
12.3 Make all monies owing by the Buyer to the Seller on any account immediately due and payable.
12.4 The Seller may only take any one or more of the actions described in clause 12.2, provided that, if the default is capable of being rectified, the Seller first gives the Buyer 5 business days' written notice and the Buyer fails to rectify

the breach within that period after receiving the notice. Otherwise the Seller may take any one or more of those actions immediately on notice in writing to the Buyer.
12.5 Until the Seller receives full payment of all monies due from the Buyer on any account, the Buyer must keep the Goods separate and in good condition as a fiduciary of the Seller, clearly showing the Seller's ownership of the Goods and must keep books recording the Seller's ownership of the Goods and the Buyer's sale or other dealings with them.
12.6 If the Buyer defaults then, in addition to clause 12.2, the Seller may take possession of the Goods wherever the Goods are located and access the Buyer's premises or other location where the Goods are stored for that purpose.
12.7 The risk of any loss or damage to the Goods passes from the Seller to the Buyer on Delivery.
12.8 The Seller may also recover legal and debt collection costs, including debt collection commissions, from the Buyer.

13. Personal Property Securities Act 2009

13.1 The Buyer acknowledges that it grants to the Seller a Security Interest in all Goods supplied by the Seller and their proceeds, to secure all monies owing to the Seller now in the future in respect of the supply of Goods.
13.2 The Buyer undertakes to provide any information that the Seller may reasonably require to enable the Seller to perfect and maintain the perfection for its Security Interest (including by registration of a financing statement).
13.3 The Buyer undertakes to notify the Seller in writing of any changes in its name and/or any other change in details (including, but not limited to, change in address, telephone number, trading name or business practice) within 10 business days of the change.
13.4 The Buyer waives its right to receive a verification statement in respect of any financing statement and agrees to the extent permitted by the law that:
13.4.1 Where the Seller has rights in addition to, or existing separately from those in Chapter 4 of the PPS Act, those rights will continue to apply and in particular, will not be limited by Part 4.3 in Chapter 4; and
13.4.2 The rights of the Buyer as debtor under Sections 130,132,135 and 137 will not apply to these Terms and Conditions.
13.5 The Buyer will pay reasonable and substantiated costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or financing change statement in connection with these Terms and Conditions.
13.6 The Buyer agrees that it will not allow Security Interests to be created or registered over the Goods in priority to the Security Interest(s) held by the Seller.

14. Termination

14.1 On termination of these Terms and Conditions whether pursuant to clause 12 or otherwise:
14.1.1 the Buyer remains liable to the Seller for all amounts owed under these Terms and Conditions; and
14.1.2 the Buyer will immediately deliver to the Seller at its business address (or such other address as the Seller reasonably directs), or make available to the Seller to collect at the Buyer's delivery address, (as advised by the Seller) all Goods in the Buyer's possession where title has not passed to the Buyer.

15. Credit

15.1 The Seller may grant the Buyer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by the Seller.
15.2 Until the Seller grants the Buyer credit by notice in writing, the Seller will only supply Goods to the Buyer on the basis of cash being received by the Seller.
15.3 Notwithstanding anything else in these Terms and Conditions, any charges for artwork, stereos and forms must be paid according to terms granted.
15.4 The granting of credit does not oblige the Seller to extend any particular amount of credit to the Buyer.

16. Warranties & Limitation of Liability

16.1 The Seller warrants that the Goods supplied are of merchantable quality and fit for the purpose for which they are supplied.
16.2 The Seller's liability for breach of clause 16.1 or a condition or warranty implied into this Contract by law including, without limitation, the statutory provisions (other than a warranty found under the Competition and Consumer Act 2010, Schedule 2, sections 51-59) is limited to any one of the following as determined by the Seller:
16.2.1 for Goods, products or materials – the cost of replacement of the defective Goods as soon as reasonably practicable, the repair of the defective Goods or repayment (or allowance) of the invoice price of the defective Goods;
16.2.2 for services to the provision of services again or payment of the cost of having the relevant services provide again.
16.3 To the extent the law permits, neither party is liable to the other (whether directly or through any other third party making claim against a party) for consequential, special or indirect loss or damage of any kind howsoever arising and whether caused by a breach of any of the warranties, terms, conditions or any other provisions of a Contract or from tort or otherwise related to the contract. Consequential, special or indirect losses will be taken to include but not limited to:
16.3.1 any loss of income, profit, revenue or business opportunity;
16.3.2 any loss in the nature of overhead costs;
16.3.3 any loss of goodwill or reputation including, without limitation, any loss of value of intellectual property and any damages, liquidated sums or penalties under any other agreement.
16.4 The Seller's obligations in the event of paragraph 16.2 applying do not include defects in Goods caused by the improper use or maintenance of Goods or related components or normal wear and tear and damage.
16.5 Save as otherwise might be provided by statute or the Master Agreement, the Seller assumes no liability whatever for any technical advice, recommendation, information (whether contained in data sheets or otherwise) or assistance given, or therefrom, all such advice being given and accepted at Buyer's sole risk.
16.6 Save as otherwise might be provided by statute, the Seller assumes no liability whatsoever for printed Goods where the printing has been produced in accordance with artwork checked and authorised by the Buyer. The Seller is in no way liable for variations to the artwork, image or text caused by the nature of the printing process selected by the Buyer. Nor is the Seller liable for any error in the artwork, image or text provided by the Buyer to the Seller.
16.7 For the purpose of clause 16.2, the value of the Goods will be calculated by reference to the invoice value of the Goods.
16.8 Subject to clause 16.2 and for the purpose of clause 16.7, if there is no invoice value for the Goods, the compensation will be calculated by reference to the value of such Goods at the place and time when they were delivered to the Buyer or should have been so delivered. The value of the Goods will be fixed according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of Goods of the same kind and quality.
16.9 The Seller is not liable for any Goods or services to the extent that the Goods are used, stored, handled or maintained incorrectly or inappropriately after Delivery. The Buyer must ensure that all of the Buyer's procedures and standards are met before use or on-sale. It is the Buyer's sole

responsibility to ensure that materials, designs, drawings, specifications and procedures provided by or on behalf of the Buyer to be used by the Seller in meeting any Orders, are correct, appropriate and comply with all applicable laws, regulations and standards.

17. Indemnity

The Buyer indemnifies and will keep indemnified the Seller against all claims, loss, damage, liability, cost or expense that may be incurred or suffered by the Seller (and/or the Seller's employees, agents or contractors) arising from or in connection with (1) any breach of – or default under – the Contract or any related order or contract, or the Competition and Consumer Act 2010 (Cth) and (2) any claims by a third party in respect of personal injury, death or damage to property, whether or not they relate to fault in the Goods.

18. Waiver

The Seller's failure at any time to insist on the performance of any provision of these Terms and Conditions and/or of a Contract is not a waiver of the Seller's rights at any time later to insist on performance of that provision or any other provision.

19. Patents & Design

19.1 In consideration of the Seller accepting an Order which involves printing or use of any mark, picture or similar from the Buyer, the Buyer warrants that no patent, copyright, trademark or design is infringed, and the Buyer holds the Seller harmless and the Buyer's indemnity under clause 17 extends to all costs and/or expenses incurred by the seller arising from any claim by a third party of infringement of their rights.
19.2 All technical information advice, know how, drawings, design and samples, including quotations given, are submitted by the Seller on the basis that they will remain the Seller's property and must be kept confidential by the Buyer who will not make any use of such items (other than as required to obtain the full benefit of the Goods for their intended purpose) without the Seller's consent in writing, and the Seller will be entitled to compensation for any unauthorised use of such information.
19.3 The Buyer agrees that all tooling, materials, industrial or intellectual property or the like used in the preparation for or production of the goods, any product or provision of any service will be and remain the property of the Seller or its nominee despite any contribution by the Buyer.

20. Governing Law and Jurisdiction

These Terms and Conditions will be governed by the laws of Australia. The parties submit to the non-exclusive jurisdiction of the courts of Australia in respect of any dispute arising under or in connection with these Terms and Condition.

21. Pallets

The Buyer agrees that pallets and reusable packaging remain the property of the Seller or its nominee at all times and the Buyer must promptly return all pallets and reusable packaging provided by the seller. The Buyer indemnifies the Seller for the costs of hire and/or replacement of any pallets not returned in accordance with the Seller's request and no later than 10 business days. This clause does not apply to pallets that have been sold and invoiced to the Buyer.

22. Persons

22.1 In these Terms and Conditions a reference to:
22.1.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
22.1.2 a person includes the legal personal representatives, successors and assigns of that person; and
22.1.3 anybody which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

23. Authority

23.1 The person placing the Order with the Seller and the person to whom the Seller provides Goods and Services warrant they are authorised by the Buyer to receive Goods from the Seller.
23.2 The person who signs the Application on behalf of the Buyer warrants that they have full authority to bind the Buyer to these Terms and Conditions.

24. Entire Agreement

24.1 Other than the terms set out in any Master Agreement, previous dealings between the Seller and the Buyer will not have any effect on the Contract.
24.2 Trade custom and/or trade usage is superseded by the Contract and will not be applicable in the interpretation of the Contract.
24.3 A Contract constitutes the agreement between the Seller and the Buyer with respect to the goods supplied under the Contract.
24.4 Subject to clause 24.3, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any).
24.5 The parties may vary these Terms and Conditions by agreement in writing between them.
25. No Assignment by Buyer Without Consent
25.1 The Buyer must not, without the prior written consent of the Seller:
25.1.1 Assign or novate any contract under these Terms and Conditions;
25.1.2 Transfer any right or obligations arising from these Terms and Conditions;
25.1.3 Mortgage, charge, create a security interest (as defined in s.51A of the Corporations Act 2001) over or otherwise encumber any benefit arising from these Terms and Conditions;
25.1.4 Subcontract the performance of any of its obligations under these Terms and Conditions
25.2 A change in the effective management, ownership or control of a party is taken to be an assignment for the purposes of this clause.

26. Assignment by Seller

The Seller may assign the whole or any part of the benefit of a contract under these Terms and Conditions at any time and will notify the Buyer within a reasonable period after having done so.

27. Joint and Several

If a Buyer consists of more than one person or corporate body, the Terms and Conditions binds them jointly and each of them severally.

28. This Document and Headings

28.1 In these Terms and Conditions:
28.1.1 a reference to this or another document
28.1.2 includes the document as varied or replaced regardless of any change in the identity of the parties; and
28.1.3 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of these Terms and Conditions.

29. Severance

29.1 If a provision in these Terms and Conditions is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
29.2 If it is not possible to read down a provision as required in this paragraph, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Terms and Conditions.

30. Number and Gender

30.1 In these Terms and Conditions a reference to:
30.1.1 The singular includes the plural and vice versa; and
30.1.2 A gender includes the other genders

31. Notices

31.1 All notices to be given to or demands to be made upon any party to a Contract under these Terms and Conditions must be in writing and may be delivered in person or sent by mail or email to the current business address of the party.
31.2 All notices are deemed served 2 business days after the date of posting or if delivered personally, on the actual date of receipt, or if sent by email, in the normal course of transmission.

32. Updates To Term s and Conditions

32.1 The Seller may amend or add to these terms and conditions from time to time. Such updates will be available on the Seller's website at www.abbe.com.au. When any new terms and conditions are posted on the Seller's website, the Customer agrees to be bound by the new terms and conditions.