

## **TERMS AND CONDITIONS OF SALE**

ELSEY NOMINEES PTY LTD ACN 005 122 878

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These Terms and Condition are between Elsey Nominees Pty Ltd ACN 005 122 878 and its related bodies (referred to throughout as “the supplier”, “us”, “our”) and the customer or client (sometimes referred to as “you” or “your”).

Using our services indicates, accessing our website and/or placing an order with the Supplier indicates your agreement to these General Terms and Condition and any terms and conditions specific to the services purchased.

These terms and condition have been written to encompass a variety or contract types including for the purpose of retail sales, account sales and for the supply of goods for resale.

### **Payment terms**

1. The terms of payment are strictly;
  - (a) in advance of delivery for retail or website transactions;
  - (b) thirty (30) days for approved wholesale or account customers (or such other period as nominated by the supplier) from the end of month of date of invoice.
2. Should the Customer not pay for the goods or services supplied by the Supplier in accordance with the terms provided herein, or as agreed in writing by the Supplier, the Supplier will be entitled to charge:
  - (a) an monthly administration fee of 5 percent of the full account balance; and
  - (b) nominal interest at the base ANZ overdraft rate on the full account balance.
3. Unless stated otherwise all prices quoted are in Australian dollars and payments are to be made in Australian currency free of exchange.
4. Payment for goods supplied shall be made in full by the Customer to the Supplier by a method of payment approved by the Supplier
5. The Supplier may, from time to time, offer account customers discounts as an incentive for making timely payments. Any such incentives will only be provided to customers on such terms approved by the Supplier. No settlement discounts will be allowed if a customer’s current account balance is overdue.
6. The Supplier reserves the right to recover any merchant fees or surcharges that it may incur as a consequence of a customer purchasing goods from the Supplier by credit card at the same rate charged to the Supplier by the merchant.
7. The Supplier reserves the right to impose a minimum order value.

### **Price Variation**

8. The Supplier reserves the right to vary any quoted prices of goods at any time by notice in writing to the Customer or public display on the Supplier website <https://keonlabels.com.au>.
9. The Customer may within 14 days of that notice request that any part of an order for goods effected by the price variation be terminated and shall notify the Supplier in writing of such request.
10. Within 14 days of receipt of a request for termination from a Customer, the Supplier may either terminate that part of the order, or elect to supply the goods to the Customer at the original price which shall be binding on the Customer and the Customer’s request for termination shall have no effect.

### **Withdrawal of Quotation**

11. Unless withdrawn, any quotation made by the Supplier is open for acceptance by the Customer no more than 14 days from the date of the quotation or such other period as specified by the Supplier in writing to the Customer.

### **Jurisdiction**

12. The Customer acknowledges and agrees that this agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.

13. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.

### **Formation of contract**

14. Quotations made by the Supplier will not be construed as an obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject any request to purchase received by the customer. Only written acceptance by the Supplier of the Customer's offer will complete a contract.

15. Placement of an order, either verbally, online through the website or in writing, will imply the customers' acceptance of the Supplier's product, price, delivery and of these terms and conditions.

### **Retention of title**

16. Title in the goods does not pass to the Customer until the full payment has been paid, further, until the Customer has made payment in full of all the other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account).

17. Whilst the Customer has not paid for the goods supplied in full, the Customer agrees that property and title of the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied.

18. Until payment in full has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.

19. The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Customer will sell as agent and Bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.

20. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 25 hereof unless and until the funds held on trust are remitted to the Supplier.

21. The Supplier may, whilst it retains title to the goods, at its absolute discretion and without further notice and prejudice to any other of its rights, re-take possession of the goods from any site owned or controlled by the Customer, and the Customer grants the Supplier (or its duly appointed agent) an irrevocable licence to do so without any liability for any loss or damage suffered as a consequence of such entry or re-taking of possession.

22. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clause 2. Where the Supplier exercises any power to enter the premises, that entry will not give rise

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to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.

23. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.

### **Cancellation of orders**

24. Cancellation of any order by the Customer requires acceptance in writing from the Supplier (which may or may not be granted) otherwise the Goods will be delivered to the Customer and the Supplier will be entitled to receive payment of the purchase price from the Customer in accordance with these Terms and Conditions.

25. In the event that the Supplier accepts cancellation of an order by a Customer, it reserves the right to charge the Customer a restocking fee.

### **Cancellation of credit or account**

26. The Supplier reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of this agreement or not.

27. Upon cancellation with or without notice all liabilities incurred by the Customer become immediately due and payable to the Supplier.

28. The Supplier is not obliged to supply goods in relation to any order and may cancel or suspend (in its absolute discretion and without limitation to any other remedy available to it) the trading account of the Customer at any time if:

- (a) the Customer breaches any of these Terms and Conditions;
- (b) the Customer has provided any false or misleading or inaccurate information to the Supplier (including information set out in the Application);
- (c) the Customer commences to be wound up, struck off, placed in liquidation, under official management, or to appoint either a receiver or an administrator; or
- (d) the Supplier has formed the opinion (in its absolute discretion) that the Customer no longer meets the financial conditions or commitment expected from its customers.

### **Corporations**

29. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

### **Trustee capacity**

30. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:

- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and

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- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

31. The Customer must give the Supplier a copy of the trust deed upon request.

### **Partnership**

32. If the Customer enters into this agreement as a partnership, the Customer warrants that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

33. If the Customer is a partnership, it must advise the Supplier in the case of a change of partners. The Supplier may ask for new guarantors to sign a guarantee and indemnity.

### **Insolvency**

34. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

### **Costs**

35. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).

36. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

37. The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows.

- (a) Firstly, in payment of any and all collection costs and legal costs;
- (b) Secondly, in payment of any interest incurred;
- (c) Thirdly, in payment of the outstanding invoice(s).

### **Insurance obligation**

38. From the day that risk in the goods passes to the Customer until the passing of title, the Customer must, at its own cost, insure the goods, against such risks as a prudent owner of the goods would insure them (for their full insurable value).

### **Taxes and duty**

39. Currently the customer is not required to pay GST on any supply made by the Supplier to the Customer under this agreement. In the future, the payment of GST will be in addition to any other amount payable by the Customer for a taxable supply.

40. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration; the Supplier becomes liable to pay any tax, duty,

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excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

### **Set-off**

41. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

42. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.

### **Indemnity and liability**

43. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

45. Without limiting foregoing, you agree that in no event shall the maximum aggregate liability exceed AUD\$500.00 against the Supplier.

46. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.

47. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

48. In relation to the supply of goods, the Supplier's liability is limited to:

- (a) replacing the goods or supplying similar goods;
- (b) repairing the goods;
- (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
- (d) providing the cost for having the goods repaired.

### **Limitation of Liability**

49. Except as expressly provided to the contrary in these Terms and Conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise in relation to the goods (including but not limited to those implied by the United Nations Convention on Contracts for the International Sale of goods) are excluded to the maximum extent permitted by law.

50. To the extent that any provision of legislation of the Commonwealth or any State or Territory may imply warranties or impose obligations on the Supplier which cannot be excluded, the Supplier's liability will be limited to one or more of the following as determined by the Supplier:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

51. Except as expressly provided in these Terms and Conditions, the Supplier shall not be liable to the Customer, its servants agents or contractors for any loss, damage, injury to property or persons (including but not limited to loss of profits or business or other direct, indirect, special, consequential

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or incidental damages) resulting from, arising out of, or in connection with the acquisition, delivery, re-supply, retaking of possession, installation or use of the goods or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the performance or non-performance of an Order.

52. The Customer agrees to indemnify the Supplier its employees and agents against all actions proceedings and claims (including consequential loss and loss of profits) whatsoever brought against the Supplier its servant agents or contractors in relation to any injury loss of life or damage to any property or financial or other consequential loss for and in respect of any loss injury expense or damage howsoever caused whether by the negligence of the Supplier or not arising directly or indirectly out of or in any way attributable or incidental to the performance of an Order.

### **Delivery**

53. Goods shall be delivered to the Customer F.I.S in any capital city or FAS alongside rail country deliveries.

54. Any dates specified for delivery of any goods are estimated dates only and the Supplier shall not be liable for any damage or loss whatsoever which the Customer may suffer as a result of delivery being delayed for any reason.

55. The Supplier reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract subject to these terms and conditions. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the Customer to repudiate the entire Order.

56. The Customer shall inspect all goods delivered against the invoice and/or delivery docket at the time of receipt of goods and must note any deficiencies before acknowledging receipt.

57. Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and additional transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to the Supplier that it will fail or refuse to take or accept delivery at the time specified or at any other times that the Supplier (or its nominated carrier) is able to deliver the goods. the Supplier accepts no responsibility for any damage whatsoever to the goods whether caused by or attributable to directly or indirectly by the Supplier, its employees. agents or contractors. Notice by the Supplier that the goods have been stored in accordance with this clause shall constitute delivery of the goods.

### **Packing**

58. The chargeable weight for the quantity of goods order is the nominal weight of package (inclusive of wrapper, box, cores, plugs and protection whether or not the label is wrapped).

59. Packing will be effected in accordance with the Supplier's standard practice and the cost of packing is included in the price. If the Customer requests alternative packing the Customer will bear the cost of such packing.

### **Customer Guillotining Policy**

60. Any cutting requirements for items not published within the Supplier's price book will incur a custom cutting charge.

### **Claims and Returns**

61. Goods may only be returned for credit or exchange within 30 days of the date of the invoice.

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62. Goods returned for a credit or exchange to the Supplier will not be accepted unless:

(a) the goods are returned in original packaging and are fit for resale; and

(b) the Customer agrees to pay a minimum restocking fee of \$50.00 or if the value of the goods returned is greater than \$750.00, 10.00% of the invoice value of the returned goods.

63. Any goods returned must be at the Customer's entire risk and expense except in cases where goods have been supplied in error by the Supplier, all goods returned must be by the Supplier's nominated carrier.

64. The Supplier shall not be liable for any claim, loss or damage either direct or consequential arising out of any defects arising from the supply or use of the goods.

### **Execution**

65. The Customer acknowledges that its agents and employees may place orders for goods with the Supplier and that it shall be bound by these terms and conditions irrespective of whether any such orders are unauthorised or fraudulent.

### **Notices**

66. The Supplier may serve any notice on the Customer by forwarding it by post, email or facsimile at the last known address of the Customer.

### **Clerical Errors**

67. Clerical errors, typing errors or other errors in computations, websites, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier shall be subject to correction by the Supplier.

### **Severance**

68. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

69. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

### **Variation**

70. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer or by public display on our website <https://www.keonlabels.com.au/>.

71. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing.

### **Entire agreement**

72. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

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73. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (Original Agreement) between the Customer and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.