

TERMS AND CONDITIONS

1. General

The whole of the Agreement between Industrial Laser Cutting Pty Ltd t/as ("ILasercut") ABN 81 270 326 516 and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the products of materials (that may or may not be supplied by the Customer) and/or parts and/or labour and/or services and/or computer software programs supplied by under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

2. Credit Terms

- 2.1 Payment is due on or prior to 30 days from the date of the invoice or the date the customer accepts or is deemed to accept delivery unless otherwise stated in writing by. If payment is not received by the due date, may charge liquidated damages at a rate equivalent to two percent (2%) in excess of the rate of interest charged by the Westpac Banking Corporation on overdraft accounts in excess of \$100,000.00.
- 2.2 ILasercut's express or implied approval for extending credit facility to the Customer as contemplated by Clause 2.1 may be revoked or withdrawn by at any time.
- 2.3 The Customer is not entitled to any set off of credit notes or any other form of ILasercut alleged indebtedness to the Customer against amounts due to ILasercut pursuant to these Terms.
- 2.4 ILasercut is entitled to set off amounts owed to ILasercut by the Customer against any money owing to the Customer on any account whatsoever.
- 2.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by ILasercut for enforcement of obligations and recovery of monies due from the Customer to ILasercut.
- 2.6 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued and/or costs which may have been incurred, and then to principal.

3. Quotations and Pricing

- 3.1 A quotation by ILasercut shall not constitute an offer. Quotations will remain valid for thirty days (30) from the date of the quotation.
- 3.2 Oral quotations will be subject to the price prescribed on the invoice or other contractual documents.
- 3.3 The price for the Goods excludes: -
 - 3.3.1 Any statutory charge, tax including any Goods and services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ("GST"), duty or impost levied in respect of the Goods and which has not been allowed for by ILasercut in calculating the price.
 - 3.3.2 The cost of freight, delivery, transportation, packaging, shipping, clearance fees and other cost, charge and expense incurred by ILasercut in the course of supplying and delivering the Goods to the Customer.

- 3.4 Subject to Clause 3, if ILasercut has not specified the price to be charged to the Customer at the time that the Customer places its order, the price charged to the Customer shall be the price ruling as at the date of delivery. The Customer acknowledges that ILasercut's prices are subject to alteration from time to time.

4. Delivery and Supply

- 4.1 Any times quoted for delivery and/or supply are estimates only and ILasercut shall not be liable for failure to deliver/supply or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery/supply or dispatch.
- 4.2 ILasercut may refuse to supply any order by the Customer for Goods in its absolute discretion and may make acceptance of an order from the Customer conditional upon it receiving a satisfactory credit assessment.
- 4.3 If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer: -
 - 4.3.1 shall be liable for any Additional Cost, Charge and Expense Incurred by ILasercut in complying with the Customer's direction; and
 - 4.3.2 shall pay for the whole of the invoiced value of the services pursuant to Clause 5 notwithstanding the staggered deliveries or that the Customer may not have signed a receipt for the Goods.
- 4.4 The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when ILasercut notifies the Customer that the Goods are available for collection.
- 4.5 The risk of damage, loss or deterioration of any Goods will pass to the Customer upon delivery or upon deemed delivery where ILasercut has notified the Customer that the Goods are available for collection.
- 4.6 If the Customer is unable or fails to accept delivery of the Goods, ILasercut may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by ILasercut. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all cost, charge and expense incurred by ILasercut on account of storage, detention, double cartage/delivery or similar causes.
- 4.7 Subject to Clause 4.1, the Customer agrees that it will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.

5. Payment

- 5.1 ILasercut shall raise invoices: -
 - 5.1.1 In the case where ILasercut sources and purchases Goods for the Customer at the Customer's request, immediately after incurring the obligation to pay for the Goods.
 - 5.1.2 In the case of Goods consisting of computer software programs, immediately after that program is fully operational.
 - 5.1.3 In the case of Goods consisting of services and/or labour, immediately after any part of the Goods are provided or delivered to the Customer notwithstanding that the Customer may have directed that delivery of the Goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the Goods.

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5.2 Notwithstanding Clause 5.1, ILasercut reserves the right to require the Customer to pay the price determined by ILasercut at any time prior to the production or delivery of the Goods.

6. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to ILasercut from time to time: -

- 6.1 All sums outstanding become immediately due and payable by the Customer to ILasercut if the Customer makes default in paying any other sums due to ILasercut, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 6.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as Bailee for ILasercut (returning the same to ILasercut on request). The Goods shall nevertheless be at the risk of the Customer from the time specified in Clause 4.5 and the Customer must insure the Goods from the time of delivery/supply, notwithstanding that the Goods may be in ILasercut's possession or that delivery of the Goods may be staggered.
- 6.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of ILasercut provided that there shall be no right to bind ILasercut to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for ILasercut pursuant to the fiduciary relationship.
- 6.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for ILasercut. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value the portion of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 6.5 ILasercut is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods.
- 6.6 In addition to any lien to which ILasercut may, by statute or otherwise, be entitled, ILasercut shall, in the event of the Customer failing to comply with these Terms, be entitled to a general lien over all property or goods belonging to the Customer in ILasercut's possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to the Customer under this or any other contract.

7. Cancellations and Claims

7.1 No cancellations or partial cancellation of an order by the Customer shall be accepted by ILasercut unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by ILasercut, will indemnify ILasercut against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

7.2 All complaints, claims or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to ILasercut in writing within seven (7) business days of the date of the invoice rendered for the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit or do not comply with the Customer's purchase order.

7.3 Any advice, recommendation, information or assistance provided by ILasercut in relation to the Goods purchased by it for the Customer on the Customer's instructions is given in good faith and is believed by ILasercut to be appropriate and reliable but ILasercut disclaims any liability or responsibility for the suitability of the Goods selected by the Customer and accepts no responsibility for the quality or specifications of the Goods purchased by ILasercut on behalf of the Customer.

8. Materials

The Customer shall be responsible for the purchase and supply of material of its choice to ILasercut. If the Customer requires ILasercut to source material on its behalf then, subject to the express limitation in Clause 7.3, ILasercut shall purchase the material for the Customer, and the Customer shall pay for that material as invoiced by ILasercut.

9. Drawings and Design

The Customer shall be responsible for providing ILasercut with its selected material, final drawings, plans, specifications and design in respect of the proposed Goods. ILasercut accepts no responsibility for the suitability for the end use of the Goods, and further, accepts no responsibility for the accuracy of the Customer's drawings, plans, specifications and design.

10. Computer Software Programs from Drawings and Designs

The Customer acknowledges that: -

- 10.1 ILasercut will rely upon all of the information, dimensions and other relevant criteria in the Customer's drawings, plans, specifications and design when producing Goods.
- 10.2 The Customer irrevocably authorises ILasercut to use the Goods consisting of computer software programs for the purpose only of producing the Goods for the Customer in accordance with the Customer's orders from time to time.

11. Privacy Act 1988 ("Privacy Act")

To enable ILasercut to assess the Customer's application for credit, the Customer authorises ILasercut: -

- 11.1 To obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the Privacy Act; and
- 11.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities

AND in accordance with Section 18N(1)(b) of the Privacy Act the Customer authorises ILasercut to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. The Customer understands the information can be used for the purposes of assessing its application for credit (Section 18L(4) of the Privacy Act), assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its credit worthiness.

12. Notification

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The Customer must notify ILaserCut in writing within seven (7) days of:-

- 12.1 Any alteration of the name or ownership of the Customer.
- 12.2 The issue of any legal proceedings against the Customer.
- 12.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 12.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to ILaserCut for all Goods supplied to the new owner by ILaserCut until notice of any such change is received.

13. Warranties

- 13.1 No warranties except those implied and which cannot be excluded by law are given by ILaserCut in respect of goods or services supplied. Where it is lawful to do so, the liability of ILaserCut for a breach of a condition or warranty is limited to the repair or replacement of the goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods, the supplying of the services again or the payment of the cost of having the services supplied again, as determined by ILaserCut.
- 13.2 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify ILaserCut from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against ILaserCut.
- 13.3 The Customer warrants to ILaserCut that it is purchasing Goods as the principal and not as an agent.

14. Customer's Acknowledgments

The Customer acknowledges that: -

- 14.1 Laser technology involves a heat process which can alter the composition of the material selected by the Customer for its intended Goods.
- 14.2 Thick material cut using laser technology can result in the cut edge being less than ninety (90) degrees to the surface of the material.
- 14.3 Metallic material cut using laser technology have the edges hardened by the cut.
- 14.4 Stainless steel cut using laser technology creates dross on the edges of the material and it is the Customer's responsibility to remove the dross from the material.
- 14.5 Acrylic or similar materials cut using laser technology can be affected by bloom or frosting.
- 14.6 Timber material cut using laser technology can be affected by blackening of the edges.
- 14.7 ILaserCut is not in the business of providing or supplying the material the subject of the Customer's end use or Goods.

15. Failure to Act

ILaserCut's failure to enforce or insist upon the timely performance of any term, condition, covenant or provisions under these Terms or at law, or ILaserCut's failure to insist upon timely payment of monies when due or to demand payment of any changes or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of ILaserCut's right to demand timely payment of future obligations or strict compliance with the Terms.

16. Mistake

Any mistake on any quotation, order, invoice, delivery docket or other document issued by ILaserCut in relation to the Contract shall not be binding on ILaserCut and ILaserCut may in its discretion issue such amendment document as is required to rectify such mistake. The Customer shall comply with ILaserCut's amended document.

17. Legal Construction

- 17.1 These Terms shall be governed by and interpreted according to the laws of Queensland and ILaserCut and the Customer consent and submit to the jurisdiction of the courts of Queensland.
- 17.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.