



TERMS & CONDITIONS

Standard Sale Order Terms and Conditions for supply of goods by Focus Paper

1. Definitions

In the Terms or the Order:-

"The Seller" means Focus Paper (Aust) Pty Ltd (ABN 24 104 243 174) of 59 Woodlands Drive, Braeside NSW 3195 and includes its successors and assigns.

"The Buyer" means any person, firm, corporation or entity, which purchases or orders Goods from the Seller. "Goods or the Goods" means the paper or other articles or materials described in any invoice issued by the Seller and supplied or to be supplied to the Buyer under an Order.

"Goods and Services Tax" means the tax created by A New Tax System (Goods and Services Tax) Act 1999 and its associated legislation.

"Insolvent" means:-

- (i) in the case of an individual, an application is made to a court for a sequestration order against that person or the person commits an act of bankruptcy or takes any steps to obtain protection or is granted protection from that person's creditors under any applicable legislation; and
- (ii) in either case a person or company entering into a composition, assignment or arrangement with creditors.
- (iii) in the case of a company, an application is made to a court for an order or an order is made that the company be wound up, an application is made to a court for an order appointing a provisional liquidator or receiver of the company, a meeting is convened or a resolution is passed to appoint an administrator of the company, the company calls a meeting for the purpose of appointing a liquidator or any of the events described in Sections 459C(2) (a) to (f) or 585 of the Corporations Law occurs in relation to the company;

"Order" means the agreement resulting from the acceptance by the Seller of an Order for Goods placed by the Buyer and shall be deemed to include the terms and conditions contained in the Terms, the current price list of the Seller, the information on the face of any invoice and any variations thereof agreed to in writing by the parties.

"The Terms" means these terms and conditions for the supply of the Goods by the Seller or such other terms and conditions as may be notified in writing by the Seller to the Buyer.

2. Contract

An Order contains the whole understanding of the parties relating to the subject matter of the Terms and the Terms cannot be altered or varied without the written agreement of the Seller. The Terms and the current price list of the Seller supersede all previous terms and price lists of the Seller.

3. Acceptance

The Buyer shall be deemed to accept the Terms for the purposes of any Order upon a copy of the Terms being sent or delivered by or on behalf of the Seller to the Buyer and the Buyer subsequently placing an Order with the Seller for the Goods.

4. Inconsistency

Any condition contained in any document (including any order form) created or issued by the Buyer (whether in response to the Terms or otherwise) does not bind the Seller and the Buyer acknowledges that in the absence of a variation in writing thereof agreed to by the Seller, the Buyer will be bound by the Terms.

5. Price and Terms of Payment

- 5.1 The Buyer shall pay the price stated in any invoice of the Seller and payment of the invoice shall be made by a method of payment approved by the Seller without deduction or set off.
- 5.2 The chargeable weight for the quantity actually delivered is in the case of paper in sheets, the nominal weight of reams (inclusive of the weight of ream wrapper, whether or not the paper is wrapped) and in the case of paper on reels the actual weight (inclusive of the weight of reel wrappers, cores and wooden plugs).
- 5.3 Unless Goods are specified in the price list as "Under Millpack", goods may only be purchased by the Buyer in Millpacks.
- 5.4 All payments due under an Order are to be made in Australian currency free of exchange and shall be made to the Seller's office in Australia stated on the invoice relating to such Order or to such other place as may be notified by the Seller to the Buyer in writing.
- 5.5 The Seller shall invoice the Buyer upon delivery of the Goods. Unless notified on the face of the invoice or otherwise in writing by the Seller payment of the price stated on the invoice shall be made by the Buyer on or before the last business day of the month following the month in which the invoice is rendered ("the due date"). In the event of any discrepancy between the Terms and any terms and conditions of the Seller appearing on the face of the invoice, the latter shall prevail. Time



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shall be of the essence in relation to all obligations of the Buyer to make payment for the Goods.

- 5.6 If the invoice is not paid by the due date:-
- (i) the Seller is entitled to suspend all further deliveries of the Goods to the Buyer until payment is made in full on all outstanding invoices; and
 - (ii) the price stated on the invoice shall bear interest from the date of delivery of the Goods until the price is paid in full. Interest shall be paid at an annual rate of the aggregate of 4% and the rate published under the name "National Australia Bank Reference Rate" (or any rate substituted therefore and serving a similar purpose as that rate) from time to time on the price remaining unpaid and upon any judgement recovered in respect thereof. The certificate of any officer of the National Australia Bank as to the National Australia Bank Reference Rate shall be conclusive evidence thereof. Interest shall accrue on a daily basis and shall be payable on demand.
 - (iii) the Buyer will pay or reimburse to the Seller any costs or expenses (including legal costs which the Seller incurs in collecting or attempting to collect payment from the Buyer.
- 5.7 The Goods may only be returned for credit or exchange. No refunds will be made. The Goods may only be returned for credit or exchange within 7 days of the date of invoice. At the seller's discretion, Goods returned for credit or exchange may incur a fee equal to 10% of the invoiced price of the Goods provided however that the minimum fee per Order shall be \$30 and the maximum fee per Order shall be \$300.
- 5.8 The Seller shall not under any circumstances be liable for any claim, loss or damage sustained or incurred by the Buyer or any other party arising in any way as a result of the unavailability of the Goods or any delay in delivery of the Goods or any part thereof or any failure to deliver the Goods or part thereof.
- 5.9 Subject to Clause 5.5 the Seller reserves the right at any time to suspend credit or to change credit terms provided to the Buyer when in the Seller's sole opinion the financial condition of the Buyer so warrants. In any such case in addition to other remedies herein or at law, cash payments or satisfactory security from the Buyer may be required by the Seller before dispatch of the Goods, or the due date for payment by the Buyer under any Order with the Seller may be accelerated by the Seller. The Buyer agrees that, subject to the terms of the Privacy Act 1988, the

Seller may in its absolute discretion disclose the status of the Buyer's account to any person or corporation.

6. Goods and Services Tax (GST)

Unless otherwise specifically stated, all prices and amounts listed are exclusive of GST (currently 10%). If GST is payable by the Seller on the supply of goods or services to the Buyer, the Buyer will pay the Seller the price or other amount invoiced plus GST. The Seller agrees to provide the Buyer with a tax invoice as required by the GST legislation for amounts to be paid by the Buyer in accordance with the Seller's price list.

7. Delivery and Storage

- 7.1 Whilst the Seller shall make every endeavour to deliver the correct quantity, quality and where applicable, size and weight of Goods ordered, the Buyer acknowledges that the Seller may experience difficulty in supplying the Goods in the exact terms as ordered. Accordingly, the Buyer agrees that in relation to the supply of Goods it shall accept and pay for Goods supplied by the Seller notwithstanding inaccuracies in the precise quantity, quality, size or weight of Goods (as the case may be) in comparison to the precise terms of Order, on the following basis:
- (a) in the case of raw Paper products, in accordance with percentage tolerance levels prescribed under the Terms and Conditions of supply of the manufacturing paper mill supplying the Seller or, as maybe agreed between the Buyer and the Seller from time to time.
 - (b) in all cases an appropriate pro-rata adjustment shall be made for the value of any over or under supply with a commensurate variation to the purchase price payable.
- 7.2 The Goods shall be delivered to the Buyer FIS capital city or FAS alongside rail country deliveries. Indent orders shall be delivered as per supplying mill conditions. Risk in the Goods passes to the Buyer upon the earlier of:-
- (a) delivery to the Buyer or his agent or a carrier nominated by the Buyer or by the Seller on the Buyer's behalf, or
 - (b) despatch of the invoice for the Goods to the Buyer.
- 7.3 Goods delivered to the Buyer are subject to freight and/or courier charges as determined by the Seller from time to time and which shall be payable by the Buyer. Freight and/or courier charges will be included in the invoice for the relevant Order.
- 7.4 In the event that the Buyer requests the Seller to withhold delivery of the Goods or any part



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thereof or if delivery is delayed for any other reason as a consequence of the Buyer's instructions or lack thereof the Seller may in its absolute discretion store the Goods for the Buyer and the Buyer shall pay the Seller all storage charges charged or incurred by the Seller and if the Goods are stored elsewhere all cartage charges incurred by the Seller.

- 7.5 Notice by the Seller to the Buyer that the Goods have been stored in accordance with this clause shall constitute delivery of the Goods.
- 7.6 The Seller reserves the right upon notice to the Buyer at any time to withhold deliveries if the Seller in its sole discretion considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Seller's interests.
- 7.7 Whether or not risk has passed to the Buyer, the Seller shall to the full extent permitted by law be under no liability in respect of any damage caused to, or any deterioration of, the Goods during the course of transit.

8. Packing

Packing will be effected in accordance with the Seller's standard practice and the cost of packing is included in the price. If the Buyer requests other packing the Buyer will bear the cost of packing

9. Time

- 9.1 The obligations of the Seller shall be suspended during the time and the extent that the Seller is prevented from or delayed in complying with those obligations by Force Majeure.
- 9.2 Force Majeure means circumstances beyond the control of the Seller which occur without default or negligence of the Seller and include inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, strike, lockout or other labour difficulty, executive or administrative order or act either general or of particular application of any government whether de jure or de facto or of any official purporting to act under the authority of that government, prohibition or restriction by domestic or foreign laws regulations or policies, quarantine or customs restriction, break down or damage to or confiscation of property.

10. Limitation of Liability

- 10.1 To the extent permitted by law all statutory and other implied conditions and warranties relating to the supply of the Goods by the Seller are negated, and the liability of the Seller pursuant

to any provision of legislation of the Commonwealth or any State or Territory or pursuant to any other potential liability whether arising from negligence or not, including consequential loss is limited at the option of the Seller to the replacement of the Goods or supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent goods or the payment of the cost of having the Goods repaired.

- 10.2 Except as expressly provided in these Terms, the Seller shall not be liable to the Buyer, its servant 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 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.
- 10.3 The Buyer agrees to indemnify the Seller its employees and agents against all actions proceedings and claims (including consequential loss and loss of profits) whatsoever brought against the Seller 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 Seller or not arising directly or indirectly out of or in any way attributable or non-performance of an Order. This indemnity does not derogate in any way from any other indemnity provided under an Order.
- 10.4 Any advice, recommendation, information or representation given or provided by the Seller as to the quality or performance of the Goods or their suitability for a particular purpose or otherwise in relation to the Goods shall be accepted by the Buyer at its own risk and without any liability or responsibility on the part of the Seller.

11. Taxes

Without limitation to clause 6, any sales tax, excise or other tax, impost or duty shall be payable by the Buyer and the Buyer shall not deduct any tax, impost or duty from the price payable to the Seller. Taxes, imposts and duties shall unless stated otherwise in the relevant invoice be added to invoices as separate charges.

12. Price Variation

The Seller reserves the right from time to time and at



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any time to vary the price of the Goods the subject of an Order by notice in writing to the Buyer provided always that upon receipt of that notice the Buyer may elect at any time within 14 days of the receipt of that notice to terminate the Order and shall notify the Seller in writing of its election. Within 14 days of receipt of that notice the Seller has the choice of either accepting the Buyer's election whereupon the Order is terminated or electing to sell the Goods to the Buyer at the original price which price shall be binding on the Buyer and Buyer's offer of termination shall have no effect.

13. Withdrawal of Quotation

Unless withdrawn by the Seller, any quotation made by the Seller is open for acceptance by the Buyer for 30 days from the date of the quotation or such other period as may be notified from time to time in writing by the Seller to the Buyer.

14. Property Risk

14.1 Notwithstanding any provisos in clause 7.2

Dealing with transfer of risk and notwithstanding that the Buyer or any third party has possession of the Goods, title to the Goods remain with the Seller until payment in full is received for all amounts due for the Goods and all amounts owing to the Seller by the Buyer (including any interest payable by the Buyer).

14.2 The risk of loss of, or damage to, the Goods will pass to the Buyer in accordance with clause 7.2 and the buyer will insure the Goods until sold by the buyer.

14.3 Until the title to the Goods passes to the Buyer in accordance with clause 14.1:

- (a) the buyer will hold the Goods as fiduciary agent and bailee for the Seller;
- (b) the Goods must be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices;
- (c) the Seller, its employees or agents, are entitled to enter the Buyer's premises between 9:00am and 5:00pm on any business day to inspect the Goods and any financial records of the Buyer relevant to establishing compliance with the Buyer's obligations under this clause 14;
- (d) unless otherwise notified in writing by the Seller and subject to clause 14.8, the Buyer is authorised to sell the Goods in the ordinary course of the Buyer's business, provided that any such sale is at arms length and on ordinary commercial terms, and the Buyer acknowledges and agrees that such sales do not give rise to any liability or obligations on the part of the Seller in contract or otherwise;

(e) a portion of any book-debt arising from the sale of the Goods is held on trust by the Buyer for the Seller, where the portion will be equal to the amount owing by the Buyer to the Seller in relation to the Goods the subject of the book-debt; and

(f) a portion of the proceeds of sale of Goods sold by the Buyer is held on trust by the Buyer for the Seller, where the portion will be equal to the amount owing by the Buyer to the Seller in relation to the Goods at the time of receipt of the proceeds of sale, and must be paid immediately into a separate account and must not be mixed with any other money, including funds of the Buyer, and promptly remitted without set-off or deduction to the Seller.

14.4 If the Goods are used in any manufacturing or printing process (Value Added Goods), by the Buyer or any third party, before title to the Goods has passed to the Buyer, then the Buyer must hold on trust for the Seller:

(a) a portion of any book-debt arising from the sale of the Value Added Goods, where the portion will be equal to the amount owing by the Buyer to the Seller in relation to the Goods the subject of the book-debt; and

(b) a portion of the proceeds of sale of the Value Added Goods, where the portion will be equal to the amount owing by the Buyer to the Seller in relation to the Goods at the time of receipt of the proceeds of sale.

14.5 The Buyer will not without the prior written consent of the Seller:

- (a) forward sell any Goods; or
- (b) assign or factor any book-debts arising from the sale of the Goods or the Value Added Goods.

14.6 If payment is not made by the Buyer to the Seller by the due date, the Buyer must deliver to the Seller on the demand all Goods for which title has not passed. If the Buyer does not comply with such demand, the Seller, its employees or agents, are entitled:

- (a) to enter the Buyer's premises (or premises operated by a third party) at the time to do all things necessary in order to take possession of the Goods and the Buyer;
- (i) must procure the consent of all other persons having any interest in the premises where the Goods are situated to entry of those premises by the Seller, its employees or agents; and
- (ii) indemnifies the Seller against any claim, loss, liability, cost and expenses (including any legal fees on an indemnity basis)

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that may be incurred or sustained by the Seller, its employees or agents, as a result of the entry of the premises where the Goods are situated.

- (b) with or without taking possession of the Goods, to sell them as the Seller sees fit; and Buyer's offer of termination shall have no effect.
 - (c) the Seller is not obligated to account to the Buyer for any part payment received by the Seller from the Buyer in respect of the Goods or any proceeds of sales in excess of the amount owed by the Buyer to the Seller.
- 14.7 The Buyer must pay to the Seller the costs and expenses incurred by the Seller of legal advisors, mercantile agents and other agents acting on the Seller's behalf (on a full indemnity basis) in respect of any enforcement of these Terms and Conditions, or recovery of either the money owing by the Buyer to the Seller or possession of the Goods, including the costs of discharging any lien or third party security interest over the Goods.
- 14.8 The Buyers right to hold and sell the Goods will immediately cease if the Buyer becomes Insolvent, and without the need for notice or demand by the Seller.
- 14.9 Any provision of this clause 14 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this clause 14 nor affect the validity or enforceability of that provision in any other jurisdiction.

15. Default and Termination

- 15.1 Without prejudice to any of its rights powers or remedies the Seller may terminate an Order immediately without any liability to the Buyer if:-
- (a) any payment is not made by the due date or within the time or times specified in the Order;
 - (b) there is any other breach of the Order; or
 - (c) the Buyer becomes insolvent.
- 15.2 Upon termination of an Order, the Seller shall be released from all liability under the Order and all Goods in the Seller's possession relating to the Order whether paid for by the Buyer or not shall be forfeited to the Seller absolutely.

16. Notices

- 16.1 A notice or other communication required or permitted to be given by a party to another shall be in writing and delivered personally or sent by pre-paid post or facsimile to that party's address or facsimile number stated in an Order or as notified in writing to each party from time to time.

Any such notice may be signed by any director, manager or secretary of the Seller or by any other person authorised by the Seller.

- 16.2 A notice or other communication is deemed given if:-
- (a) personally delivered upon delivery;
 - (b) mailed, on the expiration of two business days after posting;
 - (c) sent by facsimile, on confirmation of successful despatch by the sender machine or if after 1700 hrs on a working day at 0900 hrs on the next working day.

17. Intellectual Property

- 17.1 The Buyer warrants that any design or instruction furnished to the Seller will not cause the Seller to infringe any patent, registered design or trade mark in the execution of the Buyer's Order. The Buyer indemnifies the Seller against any claim, loss, liability, cost and expense that may be incurred by the Seller as a result of any infringement or unauthorised use of patents, trade marks, designs or copyright arising out of the manufacture or use of the Goods.
- 17.2 The sale and purchase of the Goods does not confer on the Buyer any license or rights under any patents, trade marks or copyright which is the property of the Seller.

18. Exclusion of Vienna Convention

The parties expressly agree that the Order shall not be governed by the conventions of the United Nations Convention on the Contracts for the International Sale of Goods adopted in Vienna in 1980 (Known as the Vienna Convention) and that the provisions of the Vienna Convention are expressly excluded.

19. Governing Law

The law if these Terms and any Order is the law of New South Wales and Australia. The parties submit themselves to the exclusive jurisdiction of any State or Territory within Australia as may be selected by the Seller in its sole discretion for proceedings in respect of any matter arising hereunder.

20. Severity

In the event that any of the provisions or conditions of the Terms or any clause or sub-clause of the Terms cannot be given full force or effect by reason of statutory invalidity, uncertainty or otherwise, the said provision or condition, clause or sub-clause, as the case may be, which cannot be given full force or effect shall be severed, ignored or read down restrictively to maintain and uphold so far as possible, the remaining conditions and provisions of the Terms.