

Terms and Conditions of Trade

NA & EP Coon Nominees Pty Ltd trading as THE ELNA PRESS

1. INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between NA & EP Coon Nominees Pty Ltd trading as The Elna Press (Elna) and the customer for the supply of goods and/or services to the customer.

1.2 Interpretation

In these Terms and Conditions:

“**Additional Work**” includes all work undertaken by Elna as a consequence of the customer’s variation, alteration or modification of their instructions in relation to the Order;

“**Business Day**” means a day on which banks are open for general banking business in Victoria;

“**Estimate**” means the estimate referred to in sub-clause 2.1 (as amended in accordance with clause 2.4);

“**Freight Costs and Charge**” includes all costs and expenses incurred by Elna in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise;

“**Goods**” means all present and after acquired goods produced by Elna under an Order;

“**GST**” means Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Interest Rate**” means a rate 2% higher than the Cash Target Rate as fixed by the Reserve Bank of Australia;

“**Order**” means the work required to be done in order to fulfil the customer’s instructions;

“**Preparatory Work**” means any and all work performed by Elna at the customer’s express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Elna at the time when Elna supplied the Estimate;

1.3 General

In these Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party’s executors, administrators, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) a reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.

1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

1.5 Business Day

If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, may be done on the next Business Day.

2. Estimate

2.1 Elna to supply estimate.

Elna may, if requested by the Customer, give the customer an estimate specifying the work required to be done in order to fulfil the customer’s instructions.

2.2 Acceptance by customer

Where Elna has provided the customer with an estimate:

- (a) Elna need not commence work until the estimate has been accepted by the customer.
- (b) The customer may accept the estimate by instructing (orally, electronically or in writing) Elna to commence work.
- (c) Estimates are valid for 30 days from the date of issue. Following that period, Elna reserves the right to re-price the estimate.

- (d) Acceptance by the customer of the estimate, whether express or implied, will constitute acceptance by the customer of these Terms and Conditions.

2.3 Estimate evidence of instructions

If the estimate is accepted by the customer, the subject of the estimate (the work) shall be carried out and the customer shall pay for the work in accordance with the estimate and these Terms and Conditions.

2.4 Elna may revise Estimate

Elna may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and Elna shall notify the customer of such amendment as soon as practicable thereafter. Upon Elna giving the customer notification of such amendment and the customer’s acceptance such amended estimate shall be and be deemed to be the estimate for the purposes of these Terms and Conditions.

3. CHARGES

3.1 Invoice

Subject to clause 5.3, when the Order has been completed, Elna will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, for an amount representing the work done in filling the Order, and for any of the other charges specified in clause 3.2.

3.2 Additional Charges

In addition to the amount of the Estimate, or where no Estimate was given, Elna may charge to the customer:

- (a) fees for any preliminary work performed at the customer’s request;
- (b) fees for additional work required to be done as a result of the customer changing his, her or its instructions;
- (c) fees for having to work from poor copy;
- (d) fees for work which involves tables or foreign language and which was not notified to Elna before the estimate was prepared;
- (e) fees for additional work required to be done as a result of author’s corrections, including repagination or reformatting;
- (f) fees and other charges for work required to be done urgently, including any overtime costs;
- (g) fees for handling or storing material or equipment supplied by the customer for the purposes of the Order;
- (h) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, artwork or any document including computer files supplied for the purposes of the Order by the customer;
- (i) freight costs and charges;
- (j) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

3.3 Under/Over supplies

- (a) The customer acknowledges that whilst Elna will make every endeavour to produce the exact number of items in the Order, owing to human and/or machine manufacturing variables the number of items actually produced may be 10% over or under the number specified in the Order (“**a discrepancy**”).
- (b) Where a discrepancy occurs Elna will adjust the amount charged to the customer for the Order on a pro rata amount to reflect the actual number of items produced.

4. DELIVERY

4.1

- 1) If the quote includes delivery Elna agrees to deliver the Goods to the customer by road using a recognized carrier.
- 2) If the customer wishes to collect the goods or arrange their own transport Elna shall notify the customer when the Goods are ready for collection. The customer must collect the Goods from Elna’s premises upon being notified that the Goods are ready for collection.

4.2 Rejection

Subject to clause 7.1 the customer may only reject the Goods if they do not comply with the customer’s instructions. If the customer wishes to reject the Goods, the customer must notify Elna of the

rejection and a Return Material Authorisation (RMA) form will be raised. The rejected goods will be collected and inspected and the customer will be notified of remedial action and the timing.

4.3 Risk

The risk in the Goods passes to the customer:

- (a) if Elna delivers the Goods to the customer's premises - at the time of delivery;
- (b) otherwise - at the time Elna notifies the customer that the Goods are ready for collection.

If the customer is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to Elna at the time the customer notifies Elna that the Goods are rejected.

Elna shall not be liable for insurance, freight or loss or damage to Goods or Services in transit when arranged by the customer, or which have been left at the customer's premises.

Elna has no obligation to insure any property in its possession.

If a client leaves property in Elna's possession for more than 6 months, Elna may dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

5. PAYMENT

5.1 Time for payment

Unless stated otherwise in the Quotation or Purchase Order, payment must be made in accordance with the Tax Invoice issued by Elna. If the customer does not have an approved credit account, payment is required prior to delivery.

5.2 Method of payment

Payment for the Order is to be made by the customer by EFT, cash, cheque, credit or any other form of payment as agreed by Elna and the customer. Unless otherwise stated, all payment shall be in Australian Dollars.

5.3 Credit Card fees

A credit card fee may be charged on amounts paid which are greater than \$1,000

5.4 Interest

Elna may charge interest at the Interest rate on amounts not paid within 90 days from the date of invoice.

5.5 Advance and progress payments

- (a) Elna may issue an invoice for the amount of the Estimate before commencing the Order where Elna has not previously carried out work for the customer or where Elna considers it otherwise prudent to do so;
- (b) Elna may, in the event that completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion to be at the Elna's discretion) and require that proportion of the Estimate to be paid in advance of any further work being done.
- (c) If the Order is suspended for more than 30 days at the request of the customer or as a result of something for which the customer is responsible, Elna may issue an invoice for a particular sum for the work already done and for other costs incurred by Elna.

6. NON-PAYMENT

6.1 Damages

The customer must pay Elna any costs, expenses or losses incurred as a result of the customer's failure to pay Elna all sums outstanding from the customer to Elna (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6.2 Retention of title

- (a) Until the customer has paid all amounts outstanding in relation to the Goods and any other goods supplied by Elna to the customer, title and property in the Goods shall not pass from Elna to the customer.
- (b) If the Goods are in the customer's possession, the customer shall hold the Goods as trustee for Elna and must store the Goods so that they are clearly identifiable as the property of the Elna.
- (c) Elna may call for and recover possession of the Goods (for which purposes Elna's employees or agents may enter the customer's

premises and take possession of the Goods without liability to the customer) and the customer must deliver the Goods to Elna if so directed by Elna.

- (d) The customer may, in the ordinary course of the customer's business, sell the Goods to a third party but:
 - (i) the proceeds of sale to the third party shall be held by the customer as trustee for Elna and the customer shall account to Elna for those sums; and
 - (ii) if Elna requires, the customer shall assign to Elna the customer's claim against the third party and shall execute all documents necessary to effect that assignment.

6.3 General lien

Elna shall, in respect of all sums owed by the customer to Elna hereunder, have a general lien on all property of the customer in Elna's possession and may, after 14 days' notice to the customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the customer's property held by Elna as aforesaid enjoys copyright protection in favour of the customer, the customer hereby grants to Elna a licence to exercise the rights conferred on Elna under this clause.

7. LIABILITY

7.1 Proofs

If Elna submits to the customer a proof of the Goods Elna will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the customer before the Order was completed. The cost of any additions, alterations or corrections to the proof after prior approval by a Client will be added to the estimate.

7.2 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer law and other applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

7.3 Australian Consumer Law

Elna acknowledges that the Australian Consumer Law provides guarantees in relation to the supply of goods and services. The liability for any failure to comply with such guarantees is limited to:

- (1) In the case of goods, any one of the following:
 - a. The replacement of the Goods or the supply of equivalent goods;
 - b. The repair of the Goods;
 - c. Payment equivalent to the cost of replacing the Goods; or
 - d. Payment equivalent to the cost of repairing the Goods
- (2) In the case of Services:
 - a. Supplying the services again; or
 - b. Payment equivalent to the cost of having the Services supplied again.

7.4 Disclaimer of Liability

Elna disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any non-excludable rights. To the extent permitted by law, the liability of Elna for a breach of a non-excludable right is limited, at Elna's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or any services supplied again.

7.5 Indirect losses

Notwithstanding any other provision of these Terms and Conditions, Elna is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the printer's failure to complete or delay in completing the Order or to deliver the Goods.

7.6 Electronic data

Without limiting the generality of the foregoing clauses, Elna will not be liable to the customer for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the customer to Elna.

7.7 Customer's property

Subject to clause 7.5, Elna will not be liable for the damage, loss or destruction of any property of the customer in Elna's possession unless the loss or damage is due to the failure of Elna to exercise due care and skill in handling or storing the property.

7.8 Force Majeure

Elna will have no liability to the customer in relation to any loss, damage or expense caused by Elna's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of Elna's normal suppliers to supply necessary materials or any other matter beyond Elna's control.

8. GENERAL MATTERS

8.1 Stock Items

If the contract between Elna and the customer relates to agreed stock items

- (a) Each delivery will, for the purposes of these Terms and Conditions, be considered to be one Order.
- (b) Subject to sub-clause (c), a party may not terminate a contract to which these Terms and Conditions apply unless that party has given 8 weeks' notice of that party's intention to terminate the contract. The party must purchase any agreed stock on hand specified in the contract.
- (c) Notwithstanding sub-clause (b), the printer may terminate the contract at any time if the customer is in breach of any provision of these Terms and Conditions relating to payment.

8.2 Alterations to style etc.

If, before the Estimate is prepared, the customer does not give Elna specific instructions in relation to style, type or layout:

- (a) Elna may use any style, type and layout which, in Elna's opinion, is appropriate; and
- (b) Elna may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the customer subsequently altering the style, type or layout used by Elna

8.3 Outside work

If Elna has to obtain goods (including film, plates, tooling/dies or artwork) and/or services not normally stocked or supplied by Elna from a third party in order to carry out the customer's instructions:

- (a) Elna will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such goods and/or services.
- (b) Elna acquires such goods and/or services as agent for the customer and not as principal and will have no liability to the customer in relation to the supply of those goods and/or services. Any claim by the customer in relation to the supply of those goods and/or services must be made directly against the third party.
- (c) The customer must pay for such goods and/or services ordered by Elna on the customer's behalf.
- (d) Property in any such goods obtained from a third party and incorporated into the Goods passes to Elna at the time of incorporation.

8.4 Material supplied by customer

If Elna and the customer agree that the customer is responsible for supplying materials or equipment for the purposes of the Order:

- (a) The customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Elna.
- (b) Elna will not normally count or check the materials and if requested by the customer to do so, may charge for counting or checking.
- (c) Elna will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the customer.
- (d) Property in any materials supplied by the customer and incorporated into the Goods passes to Elna at the time of incorporation.

8.5 Property left with printer

If the customer leaves property in Elna's possession without specific instructions as to what is to be done with it, Elna may, 12 months after gaining possession of the property, dispose of or sell the

property and retain any proceeds of sale as compensation for holding and handling the property.

8.6 Responsibility to insure

Elna has no obligation to insure any property of the customer in Elna's possession. The customer must pay the cost of any insurance arranged by Elna at the request of the customer.

8.7 Ancillary materials

Unless Elna and the customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Elna in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of Elna.

8.8 Copyright

- (a) Copyright in all artistic and literary works authored by Elna shall be the property of Elna.
- (b) The customer:
 - (i) warrants that the customer has copyright in or a licence to authorise Elna to reproduce, all artistic and literary works supplied by the customer to Elna for the purposes of the Order and the customer hereby expressly authorises Elna to reproduce all and any of such works for the purposes aforesaid;
 - (ii) hereby indemnifies and agrees to keep indemnified Elna against all liability, losses or expenses incurred by Elna in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and
- (c) The customer is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by Elna for the purposes of the Order. However, the exercise of such licence shall be conditional upon Elna having received all monies due to the printer under these Terms and Conditions.

8.9 Ideas

The Customer must keep confidential and not use any ideas communicated by Elna to the customer without Elna's written consent.

8.10 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the customer) used by Elna to store data for the purposes of completing the Order are the property of Elna. The Customer cannot require Elna to supply the customer any data so stored. In the event Elna does supply any data so stored or created Elna may charge for supplying such data to the Customer.

8.11 Storage of electronic data

Elna will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Elna agrees to store such data, Elna may charge for doing so.

8.12 Immediate Termination

In the event that:

1. the Customer becomes insolvent (within the meaning of the Corporations Act 2001) or makes any voluntary arrangement with its creditors, or
2. a petition is presented or a resolution is passed to wind up the Customer (other than for the purposes of reconstruction or amalgamation as a solvent company), or
3. a receiver or other external administrator is appointed over the whole or any part of the assets of the Customer, or
4. the Customer shall otherwise cease trading, or
5. any distress, writ of execution or other process is levied or enforced against any property of the Customer;

then in any such event Elna shall (without prejudice to any other right or remedy available to it) be entitled to terminate or cancel any contract between itself and the Customer or suspend any further deliveries of the Goods and/or Services without any liability to the Customer and if any materials or Goods and/or Services have been delivered or supplied but not paid for, the price of such materials and Goods and/or Services shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

8.13 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

If I am signing this for and on behalf of a firm, company or other organisation, I confirm that I am authorised to do so.

8.14 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

Signature

Date:

8.15 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

9 GOODS AND SERVICES TAX

9.1 All amounts are GST exclusive amounts

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

9.2 Out of pocket expenses are GST exclusive

All out of pocket expenses referred to in these Terms and Conditions are GST exclusive out of pocket expenses.

9.3 Elna to assist Customer

Elna will do all things reasonably available to it to assist the customer to claim on a timely basis any input tax credits (if any) the customer may be entitled to claim for any acquisition of goods and services from Elna. This includes Elna maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the customer.

10. PERSONAL PROPERTY SECURITIES ACT

10.1 Security Interest

The Customer acknowledges and agrees that:

- (a) these Terms and Conditions give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2009; and
- (b) the security interest is taken in all Goods previously supplied by Elna to the customer (if any) and all Goods that will be supplied in the future by Elna to the customer during the continuance of the parties' relationship.

10.2 Undertaking

The customer undertakes to:

- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which Elna may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) reimburse Elna for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
- (c) give Elna not less than 14 days' prior written notice of any proposed change in the customer's name and/or any other change in the customer's details.

10.3 Verification Statement The customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

I declare that I have carefully read and fully understand these Terms and Conditions.

I agree that these Terms and Conditions (as varied by Elna from time to time by written notice to the customer) are incorporated into every contract for supply of goods by Elna to the customer, notwithstanding any other agreement or provision to the contrary and override any such other provision.