

C.S.C.K Holdings Pty Ltd T/A Bags & Tags – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Bags & Tags" shall mean C.S.C.K Holdings Pty Ltd T/A Bags & Tags, its successors and assigns or any person acting on behalf of and with the authority of C.S.C.K Holdings Pty Ltd T/A Bags & Tags.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Bags & Tags to the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Bags & Tags to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Bags & Tags to the Customer.
- 1.5 "Services" shall mean all Services supplied by Bags & Tags to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the Price payable for the Goods as agreed between Bags & Tags and the Customer in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
- 3.1 Any instructions received by Bags & Tags from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Bags & Tags shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Bags & Tags.
- 3.4 The Customer shall give Bags & Tags not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Bags & Tags as a result of the Customer's failure to comply with this clause.
- 3.5 Goods are supplied by Bags & Tags only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price and Payment**
- 4.1 At Bags & Tags' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Bags & Tags to the Customer in respect of Goods supplied; or
- (b) Bags & Tags' current price at the date of delivery of the Goods according to Bags & Tags' current Price list; or
- (c) Bags & Tags' quoted Price (subject to clause 4.2) which shall be binding upon Bags & Tags provided that the Customer shall accept Bags & Tags' quotation in writing within thirty (30) days.
- 4.2 Bags & Tags reserves the right to change the Price in the event of a variation to Bags & Tags' quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to fluctuations in the currency exchange rate, or due to the Client requesting air freight instead of sea freight for offshore sales, or as a result of increases to Bags & Tags in the cost of materials and labour) will be charged for on the basis of Bags & Tags' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Bags & Tags' sole discretion a non-refundable deposit may be required.
- 4.4 At Bags & Tags' sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment shall be due thirty (30) days following the date of the invoice.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by direct credit, or by PAYPAL, or by any other method as agreed to between the Customer and Bags & Tags.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Delivery of Goods**
- 5.1 At Bags & Tags' sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Bags & Tags or Bags & Tags' nominated carrier).
- 5.2 At Bags & Tags' sole discretion the costs of delivery are included in the Price.
- 5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.4 Bags & Tags may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of Bags & Tags to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 Bags & Tags shall not be liable for any loss or damage whatsoever due to failure by Bags & Tags to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Bags & Tags.
- 6. Risk**
- 6.1 If Bags & Tags retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Bags & Tags is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Bags & Tags is sufficient evidence of Bags & Tags' rights to receive the insurance proceeds without the need for any person dealing with Bags & Tags to make further enquiries.
- 6.3 Where the Customer expressly requests Bags & Tags to leave Goods outside Bags & Tags' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 6.4 The Customer acknowledges and agrees that any claims must be made in writing and given to Bags & Tags within seven (7) days of delivery.
- 7. Title**
- 7.1 Bags & Tags and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Bags & Tags all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Bags & Tags in respect of all contracts between Bags & Tags and the Customer.
- 7.2 Receipt by Bags & Tags of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured,
- cleared or recognised and until then Bags & Tags' ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Bags & Tags shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from Bags & Tags to the Customer Bags & Tags may give notice in writing to the Customer to return the Goods or any of them to Bags & Tags. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) Bags & Tags shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to Bags & Tags then Bags & Tags or Bags & Tags' agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as Bags & Tags has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Bags & Tags for the Goods, on trust for Bags & Tags; and
- (f) the Customer shall not deal with the money of Bags & Tags in any way which may be adverse to Bags & Tags; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Bags & Tags; and
- (h) Bags & Tags can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Bags & Tags will be the owner of the end products.
- 8. Defects**
- 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Bags & Tags of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Bags & Tags an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Bags & Tags has agreed in writing that the Customer is entitled to reject, Bags & Tags' liability is limited to either (at Bags & Tags' discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 9. Returns**
- 9.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 8.1; and
- (b) Bags & Tags has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) Bags & Tags will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 Bags & Tags may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 9.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 10. Warranty**
- 10.1 Subject to the conditions of warranty set out in clause 10.2 Bags & Tags warrants that if any defect in any workmanship of Bags & Tags becomes apparent and is reported to Bags & Tags within two (2) months of the date of delivery (time being of the essence) then Bags & Tags will either (at Bags & Tags' sole discretion) replace or remedy the workmanship.
- 10.2 The conditions applicable to the warranty given by clause 10.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Bags & Tags; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Bags & Tags shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Bags & Tags' consent.
- (c) in respect of all claims Bags & Tags shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 10.3 For Goods not manufactured by Bags & Tags, the warranty shall be the current warranty provided by the manufacturer of the Goods. Bags & Tags shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 11. Intellectual Property**
- 11.1 Where Bags & Tags has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Bags & Tags, and shall only be used by the Customer at Bags & Tags' discretion.
- 11.2 The Customer warrants that all designs or instructions to Bags & Tags will not cause Bags & Tags to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Bags & Tags against any action taken by a third party against Bags & Tags in respect of any such infringement.
- 11.3 The Customer hereby authorises Bags & Tags to utilise images of the Goods designed or drawn by Bags & Tags in advertising, marketing, or competition material by Bags & Tags, unless otherwise negotiated between the Customer and Bags & Tags.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bags & Tags' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Bags & Tags.
- 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Bags & Tags from and against all costs and disbursements incurred by Bags & Tags in pursuing the debt including legal costs on a solicitor and own client basis and Bags & Tags' collection agency costs.
- 12.4 Without prejudice to any other remedies Bags & Tags may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Bags & Tags may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Bags & Tags will not be liable to the Customer for any loss or damage the Customer suffers because Bags & Tags has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to Bags & Tags' other remedies at law Bags & Tags shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Bags & Tags shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Bags & Tags becomes overdue, or in Bags & Tags' opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security and Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which Bags & Tags may have however:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Bags & Tags or Bags & Tags' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Bags & Tags (or Bags & Tags' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Bags & Tags elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Bags & Tags from and against all Bags & Tags' costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Bags & Tags or Bags & Tags' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
- 14.1 Bags & Tags may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Bags & Tags shall repay to the Customer any sums paid in respect of the Price. Bags & Tags shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Bags & Tags (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- 15. Privacy Act 1988**
- 15.1 The Customer and/or the Guarantor/s agree for Bags & Tags to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Bags & Tags.
- 15.2 The Customer and/or the Guarantor/s agree that Bags & Tags may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 15.3 The Customer consents to Bags & Tags being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Bags & Tags for the following purposes and for other purposes as shall be agreed between the Customer and Bags & Tags or required by law from time to time:
- (a) provision of Goods; and/or
- (b) marketing of Goods by Bags & Tags, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 15.5 Bags & Tags may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16. General**
- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 16.3 Bags & Tags shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Bags & Tags of these terms and conditions.
- 16.4 In the event of any breach of this contract by Bags & Tags the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Bags & Tags nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 Bags & Tags may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.7 The Customer agrees that Bags & Tags may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Bags & Tags notifies the Customer of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by Bags & Tags to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bags & Tags' right to subsequently enforce that provision.

Please note that a larger print version of these terms and conditions is available from Bags & Tags on request.