



# Royal Caskets

## TERMS AND CONDITIONS OF TRADE

### 1 Definitions and Interpretation

#### 1.1 In these Terms and Conditions:

##### CCA means:

- (a) the *Competition and Consumer Act 2010* (Cth) and any regulation made at anytime under the CCA (each as amended from time to time); and
- (b) Australian Consumer Law; and
- (c) any amendment made at any time to any other legislation as a consequence of a CCA.

**Client ('you', 'your')** means the person or persons identified on the Credit Application, Quote or an Order as the client and includes any persons acting on behalf of and with the authority of the Client.

**Guarantor** means the person specified in the Credit Application as the guarantor of the Client.

**Goods** means Goods supplied by the supplier to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).

**Quote** means a written description of the Goods or Services to be provided, or an estimate of the Supplier's charges for the performance of the required work.

**Services** means the services to be provided by the Supplier or the Supplier's agents to the Client in accordance with a Quote or an Order and these Terms.

**Supplier ('we', 'us', 'our')** means Royal Caskets (Qld) Pty Ltd ACN 604 485 234 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) and includes its permitted successors and assigns.

**Terms** means the agreement between the Supplier and the Client constituted by these Terms and Conditions.

#### 1.2 Interpretation

##### Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a person includes a body corporate;
- (c) a person includes the person's directors, agents, executors, administrators, successors and permitted assigns.

### 2 Acceptance of these Terms by the Client

- 2.1 The Client acknowledges and agrees to be bound by these Terms with respect to any dealings between the Client and the Supplier in relation to supply of Goods and/or Services. The Terms take precedence over any terms and conditions contained in any document of the Client or elsewhere.
- 2.2 Quotes made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quote. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
- 2.3 Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these Terms.
- 2.4 Where a deposit is required in accordance with clause 3.2, the contract is conditional on the Client paying the deposit amount to the Supplier on the terms stipulated by the Supplier.

### 3 Quotes, Orders and Payment

- 3.1 The Supplier may require payment of a deposit in the amount determined by the Supplier before acceptance of any order from the Client.
- 3.2 Any Quote issued by the Supplier is valid for 30 days from the date of issue by the Supplier and is subject to price variations and stock availability thereafter.
- 3.3 Notwithstanding clause 3.2 above, the Supplier reserves the right to vary any price stated in the Quote with reasonable notice to the Client, where the Supplier's cost of the Goods and/or Services increases by over 10%.
- 3.4 Unless otherwise expressly agreed in writing, a Quote does not include delivery of the Goods.
- 3.5 Payment for any Goods required to be shipped overseas by the

Supplier is due before the Goods leave Australia.

- 3.6 All payments required to be made by the Client under the Terms must be made in Australian Dollars, in cleared funds and free of any deduction, set-off or counterclaim.
- 3.7 Payment will be made by cash, cheque, EFT, or by any other method as agreed to between the Client and the Supplier.
- 3.8 Any payments made by a credit card will attract surcharge fees payable by the Client:
  - (a) Visa and Mastercard 1.5%;
  - (b) American Express 2.5%;
  - (c) Diner's Club 3%.
- 3.9 The Supplier may, in its complete discretion, apply any payment received from the Client to any amount owing by the Client to the Supplier.
- 3.10 The Client is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of the Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this clause affects the Client's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 3.11 If the Client does not comply with these payment terms, the Supplier may do any or all of the following:
  - (a) withhold delivery of the Goods and/or Services until all outstanding amounts including any costs and interest are paid by the Client;
  - (b) require any further dealings with the Client to be on a cash before delivery basis;
  - (b) require that all amounts owing to the Supplier for any reason whatsoever shall become immediately due and payable without deduction or demand;
  - (c) if the Client is a body corporate, require that the director(s) or other nominated parties give a guarantee and indemnity in the form the Supplier requires;
  - (e) reserve its right to rescind all discounted Quotes and to recalculate outstanding charges;
  - (f) require that the Client pay any costs and interest pursuant to these Terms.

3.12 Any late payments will attract a 5% administration fee, which will be added to the value of an outstanding invoice, and which will become due and payable by the Client to the Supplier at the time of payment.

3.13 The Client is to pay the Supplier on demand interest at the rate of 15% per annum on all overdue amounts owed by the Client to the Supplier, calculated daily.

3.14 All costs and expenses associated with collecting overdue amounts, including (but not limited to) dishonour or other bank fees, legal fees, collection costs, and internal costs and expenses of the Supplier, are to be paid by the Client on an indemnity basis as a debt due and payable under the Terms.

### 4 Delivery, title and risk

- 4.1 The Supplier may in its discretion offer paid or complimentary delivery of the Goods to the Client. The calculation of any delivery costs will be based upon the quantity and type of the Goods and the distance to the Client's nominated premises.
- 4.2 The delivery time will be arranged between the Supplier and the Client. The Supplier reserves the right to change any nominated time with reasonable notice to the Client.
- 4.3 The Supplier relies upon third party stock availability information and will not be liable for any manufacturing, distributor or transport delays with respect to the scheduled deliveries.
- 4.4 The Client must ensure that the Supplier's delivery agents or representatives have safe and unimpeded access to the Client's premises at the nominated delivery time. The Supplier may cancel delivery and require Client to pick up the Goods if such access is not provided; the Client will then become liable for the reasonable cost associated with such cancellation.
- 4.5 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk and the Supplier will accept no liability for any loss or damage of the Goods.
- 4.6 If the Supplier retains ownership of the Goods nonetheless, all risk

for the Goods passes to the Client on delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

- 4.7 The Supplier and Client agree that Supplier's ownership of the Goods shall not pass to the Client until:
- (a) the Client has paid the Supplier in cleared funds all amounts owing for the Goods under the Terms; and
  - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 4.8 Until such time as ownership of the Goods passes from the Supplier to the Client, the Supplier may give notice in writing to the Client to return the Goods or any part thereof to the Supplier. Upon such notice, the rights of the Client to obtain ownership or any other interest in the Goods shall cease. If the Client fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
- 4.9 Until such time that ownership of the Goods passes to the Client, if the Goods are converted into other products or on-sold, the parties agree that the Supplier will be the owner of the end products and the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Supplier.

## **5 Warranty, Product Faults and Returns**

- 5.1 The Customer shall inspect the Goods on delivery, and shall within 7 days of delivery notify the Supplier in writing of:
- (a) any alleged shortage in quantity of Goods or incorrect description of Goods ordered;
  - (b) any Goods found to be defective.
- 5.2 The Supplier makes no representations, warranties or guarantees as to the suitability of the Goods, and no further representations, warranties or guarantees as to the quality of the Goods, apart from the following:
- (a) those given by the manufacturer;
  - (b) those required by law; and
  - (c) a replacement guarantee of any goods where notification of a defect (accepted as a defect in the discretion of the Supplier) is provided by the Client to the Supplier in writing within 7 days of delivery or pick up.
- 5.3 The Customer agrees to provide safe and unimpeded access to the Client's premises to the Supplier or its nominated agents, representatives or contractors for the purposes of inspection of the Goods and Services and assessment of the Client's complaint. Upon assessment of the Goods and Services the subject of the Client's complaint, the Supplier may in its discretion offer replacement of the Goods and/or Services or store credit up to the value of the faulty Goods and/or Services to the Client. The Client must return the faulty Goods to the Supplier in clean and saleable condition prior to receipt of any replacement Goods or store credit. The Client acknowledges and understands that there may be colour variations ("shading") and size variations ("dimensions") in finishing of products from the sample to the delivered product and the sample is indicative only of the shade, dimensions and finish. The Client may inspect the Goods prior to delivery and accepts and acknowledges that the Supplier will otherwise not be liable for size variations in the Goods. The Client also acknowledges that shading is not a manufacturing fault and that neither the manufacturer nor the Supplier will accept liability for any Goods which may be affected by shading.
- 5.4 The Client acknowledges that the Supplier will not accept returns of Goods for change of mind.
- 5.5 Where applicable, the Supplier reserves the right to direct Client returns to a manufacturer of the subject Goods.

## **6 Representations, Liability and Indemnity**

- 6.1 The Client indemnifies and keeps indemnified the Supplier, its

employees, representatives and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against the Supplier or, for which the Supplier is liable, in connection with any loss arising from or incidental to the provision of Goods and/or Services, any Order or the subject matter of these terms and conditions including, but not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.

- 6.2 The Supplier is not liable for any loss caused to the Client by reason of force majeure events, strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
- 6.3 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/or
  - (d) providing the cost for having the Goods repaired.
- 6.4 In relation to the supply of Services, the Supplier's liability is limited to:
- (a) supplying the Services again; or
  - (b) the cost of having the Services supplied again.
- 6.5 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 Client.
- 6.6 Every exemption from liability to which the Supplier is entitled under the Terms will extend to protect any subcontractor, employee or agent of the Supplier and for the benefit of such persons they shall be deemed to be parties to the contract between the Client and the Supplier.
- 6.7 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2. The Client is entitled to a replacement or refund for a major failure and compensation for any reasonable foreseeable loss or damage. The Customer is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty is not transferable and only applies to residential owner occupiers.
- 6.8 Notwithstanding clauses 6.3 and 6.4 of the Terms, but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God or anything contained in clause 6.2.
- 6.9 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 6.10 These Terms constitute 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, except as provided for in these Terms.

## **7 Intellectual Property**

- 7.1 The copyright in all plans, sketches, design ideas and custom-made solutions which appear in the Supplier's Quote or otherwise have been prepared by the Supplier or its agents upon Client's request

("Supplier's IP") shall be the property of the Supplier.

- 7.2 The Client shall be granted an exclusive limited licence to use the Supplier's IP, which may be revoked by the Supplier at any time in its absolute discretion, unless agreed otherwise in writing.
- 7.3 The Client warrants that any designs or specifications supplied by the Client to the Supplier for the purposes of manufacture do not infringe the copyright, trademark or any other rights of any third party. The Client indemnifies and keeps indemnified the Supplier, its employees, representatives and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against the Supplier or, for which the Supplier is liable, in connection with copyright in any such designs or specifications.

## **8 Cancellation, Default and Termination**

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- 8.1 The Supplier may suspend or terminate the supply of Goods to the Client and any of its other obligations under these Terms. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier exercised its rights under this clause.
- 8.2 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or
  - (b) in the Supplier's opinion the Client will be unable to meet its payments as they fall due.
- 8.3 The Supplier may cancel these Terms before the Goods are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 8.4 At the supplier sole discretion the Client may cancel delivery of Goods and/or Services. In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any costs incurred by the Supplier up to the time of cancellation.

## **9 Capacity**

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- 9.1 If there is more than one Client, then the liability of each Client under these Terms will be joint and several.
- 9.2 If the Client is a body corporate, the Client warrants that all of its directors have signed this agreement or that the director who has signed this agreement has authority to sign on behalf of the Client pursuant to a minute of the corporation, and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Client's obligations to the Supplier.
- 9.3 If the Client is the trustee of a trust (whether disclosed to the Supplier or not), the Client warrants to the Supplier that:
- (a) the Client enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Client has the right to be indemnified out of the trust assets;
  - (c) the Client has the power under the trust deed to sign this agreement; and
  - (d) the Client will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
  - (e) The Client must give the Supplier a copy of the trust deed upon request.
- 9.4 If the Client enters into this agreement as a partnership or as partners, the Client warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Client's obligations to the Supplier. The Client must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for the new partners to sign a guarantee and indemnity as guarantor.

## **10 Variation and Waiver**

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- 10.1 The Client agrees that the Terms may be varied, added to, or amended by the Supplier at any time by written notice to the Client.
- 10.2 Any proposed variation to the Terms by the Client must be requested in writing. The Supplier may refuse any such request without

providing reasons either orally or in writing.

- 10.3 A waiver of any provision of these Terms by the Supplier must be made by an authorised officer of the Supplier in writing. Any waiver that has not been made by the Supplier in writing shall not constitute a waiver of the Supplier's rights under these Terms.
- 10.4 The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

## **11 Taxes**

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- 11.1 The Client must pay GST on any taxable supply made by the Supplier to the Client under the Terms. The payment of GST is in addition to any other consideration payable by the Client for a taxable supply.
- 11.2 If, as a result of:
- (a) any legislation becoming applicable to the subject matter of the Terms; 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, excise or levy in respect of the amounts received from the Client, then the Client must pay the Supplier these additional amounts on demand.

## **12 Jurisdiction**

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- 12.1 The Client acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
- 12.2 The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## **13 Miscellaneous**

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- 13.1 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 13.2 If any provision of the Terms 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. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- 13.3 The Client acknowledges and agrees that the provisions of the Supplier's Privacy Policy contained on the Supplier's website apply to and form part of these Terms.