

TERMS & CONDITIONS

FOR

ACME CASE CO PTY LTD

These Terms & Conditions are made available on the 19th day of October 2020:

ACME CASE Co Pty Ltd ACN 93 615 326 899

of 93a Weitherrall Street North, Siverwater NSW 2128 ("Contractor")

PURPOSE

The Customer agrees that the supply of services and products by ACME CASE CO PTY LTD is subject to these Terms and Conditions which may be amended by ACME CASE CO PTY LTD from time to time by notice. This document supersedes all previous Terms and Conditions.

DEFINITIONS

In this contract unless the context otherwise permits the following expressions shall have the following meanings:

'Contractor' shall mean and include ACME CASE Co Pty Ltd and its servants, agents, employees and sub-contractors herein known as ACME CASE.

'Contract' shall mean the contract for the packing or storage of Services made between the Contractor and the Customer as evidenced by the Quotation and these conditions.

'Customer' shall mean and include the person making the Contract with the Contractor and any person authorising the performance of the work by the Contractor and any person on whose behalf that authority is given.

'Quotation' means the quotation accepted by the Customer and submitted with these conditions.

'Working Day' means the day upon which the offices of the Contractor are open for normal business hours.

'Services' means the production and supply of timber and ply cases for the provision of a in house and on-site packing services for the customer.

'Payment Terms' means time allowed to approved customers to pay ACME CASE invoices, if not specified Payment Terms will be 30 days from the end of the month in which the invoice is dated. Payment terms cannot be varied by any other terms or conditions printed or referred to in either Customer's purchase orders or other documentation, unless expressly agreed to in writing by ACME CASE.

This contract shall be constructed according to the laws of New South Wales.

OPERATIVE CLAUSES

1. Notices

1.1 Any notice given hereunder may unless otherwise provided be given to the Customer personally, or by ordinary pre-paid post addressed to the Customer at the last address of the Customer known to the Contractor.

1.2 The Customer shall furnish to the Contractor a specimen signature and an address to which the Contractor may forward any notice or correspondence and shall promptly notify the Contractor of any change of address.

2. Services

2.1 The parties agree that the following services provided by S & D Logistics Pty Ltd form part of the Terms and Conditions of this Agreement:

- 2.1.1 Receipt of customer goods into logistics centre;
- 2.1.2 Receipt of other pre-packaged goods into logistics centre;
- 2.1.3 Packaging of unpackaged and packaged goods into crates for removal.

3. Contractor's Rights and Obligations

3.1 The Contractor is not a common carrier and may refuse to accept for packing or storage any, or all Services for any person without being obliged to give any reason for such refusal.

3.2 The Contractor may assign the Contract without the consent of the Customer and the Contractor is authorised by the Customer to arrange to contract with any other person or Contractor to provide the services to be performed hereunder or any part thereof as and upon such items and conditions as the Contractor may in its absolute and unfettered discretion deem appropriate and the Customer appoints and authorises the Contractor to enter into any such contract as aforesaid as agent and attorney for himself and for the owner of the Services and any person entitled to possession thereof.

3.3 The Contractor may at any time during the packing break the journey, transfer Services from vehicle to vehicle and travel to any destination by any route whatsoever and when Services are in store it may store the Services in any warehouse whatsoever.

4. Price and Orders

4.1 The Customer will place an order for Services with ACME CASE in accordance with ACME CASE processes as advised to the Customer from time to time. ACME CASE may, at its discretion, reject any Order.

4.2 The Customer will pay to ACME CASE the Price for the Services in this Contract.

4.3 The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in the Price.

4.4 ACME CASE may change the Price for the Services at any time on giving prior notice to the Buyer. Any change to the Price will apply to all Services delivered on or after the date specified by ACME CASE in the notice to the Customer. If no date is specified in the notice, the change will be effective immediately for all Services delivered after the date of notification, and whether or not an Order for the Services had already been received and accepted prior to the change.

4.5 There is no obligation on ACME CASE to enquire as to the authority of any person placing an Order on behalf of the Customer.

5. Payment

5.1 Payment by approved Customers is to be made within 30 days of invoice date.

5.2 Interest at the rate of 10% per annum may be charged by ACME CASE on all overdue amounts.

5.3 Credit card payments will incur a fee of 2%, ACME CASE will only accept Visa and Mastercard credit cards.

5.4 Other method of Payment; Online using Visa, Mastercard (no fee charged) or Bpay.

6. Costs of Enforcing Terms

6.1 The Customer must also pay any costs incurred by ACME CASE in enforcing its rights under these Terms and Conditions including cheque fees, commission, legal expenses (on an indemnity basis) and any other incidentals which will be added to the outstanding account.

6.2 ACME Co CASE may at its sole discretion appropriate any payment from the Customer to any outstanding amount then due.

7. Credit Limit

7.1 The credit limit is the amount notified to the Customer from time to time by ACME CASE.

7.2 ACME CASE reserves the right to refuse the supply of Services on credit in the event that the Customer exceeds the credit limit.

7.3 At any time, ACME CASE can use its absolute discretion to alter the credit limit without having to give reasons for its actions.

8. Purchase Price

8.1 Prices exclude all government imposts, levies and duties (including any GST or equivalent) and the cost of packaging, all of which shall be to the Customer's account.

8.2 An extra charge may be made where additional work results from lack of precision in the information and detail provided by the customer at the time of accepting the quote.

9. Risk

9.1 Risk in relation to any Services passes to the Customer on delivery of the Services. Delivery of Services will be at ACME CASES' premises on collection of the Serviced good by the Customer, its employees, agents or contractors.

9.2 If ACME CASE has expressly agreed to ship the Services, risk in the Services passes immediately on delivery of the Services to the Customer's designated place with POD of delivery by ACME CASE or its agent.

10. Title to Products

10.1 Until the purchase price of the products and all other sums due by the Customer to ACME CASE upon any account whatsoever have been paid or satisfied in full:

a) the Services shall remain the property of ACME CASE notwithstanding the delivery of the products and the passing of risk to the Customer;

b) ACME CASE may at any time recover the Services if they are in the Customer's possession and re-sell the Services if any payment owed by the Customer on any account is overdue;

c) for the purpose of recovering the Services, ACME Co CASE or its agents may enter upon the Customer's or other premises upon which the Services are located;

d) the Customer shall possess all Services on a fiduciary basis only; and

e) the Customer has the right to dispose of the Services in the course of its business for the account of ACME CASE and to pass good title to the Services to its customer being a bona fide purchaser for value without notice of ACME CASES' rights. If the Services are on-sold prior to ACME CASE being paid in full then the sale proceeds are to be held on trust by the Customer for ACME CASE.

11. Customer Responsibilities

11.1 The Customer warrants the accuracy of any information (other than estimates of value given to the Contractor) on which the Contractor reasonably relies in assessing the estimate of the resources necessary to carry out the work performed under the Contract.

11.2 In respect of any Services packed or removed or stored hereunder the Customer warrants that he or she has the right, power and authority to deal with such Services and to enter into this Contract and shall indemnify the Contractor against any claim against it by reason of any breach of such warranty.

- 11.3 In the event that any Services may be lawfully seized, detained or removed from the custody of the Contractor the liability of the Customer hereunder shall remain in force and the liability of the Contractor to produce or deliver the Services shall thereupon cease.
- 11.4 The Customer shall prior to the commencement of the packing or storage give written notice to the Contractor of any Services which are:
- a) Of a fragile or brittle nature or which are not readily apparent as such, or
 - b) Include any jewellery, plate, precious object, object d'art, work of art, medal, money, stamp, collection of items, fur, electronic or piece of precision equipment in any case having a value in excess of \$300.00.
- 11.5 The Customer, or its agent is requested to be in attendance at the premises when the Contractor arrives and until the service is completed. It is impossible for the Contractor to give an exact time for the completion of services; therefore, the Contractor cannot arrange for services to be carried out at specific times of day.
- 11.6 It is the responsibility of the Customer or its agent to ensure that all Services to be removed or stored are given to the Contractor and none is left behind or taken by the Contractor in error and the Customer shall indemnify the Contractor against any claim against the Contractor arising from breach by the Customer of this condition.
- 11.7 The Customer shall not tender for packing or storage of any article or substance which is, or may become of, a dangerous corrosive inflammable explosive or damaging nature, nor anything likely to encourage any vermin or pest.
- 11.8 The Customer shall indemnify the Contractor against any loss or damage which may be suffered by the Contractor through the presence of any such article or substance in any Services removed or stored for such Customer and against any claim made against the Contractor by any other person arising therefrom.
- 11.9 In the event of discovery by the Contractor shall upon notification thereof immediately remove such article or substance from the place where the same is situated and if the Customer should fail to do so the Contractor may at its discretion remove, destroy or otherwise dispose of the same without in any way becoming liable to the Customer.
- 11.10 If the customer:
- a) Fails to pay for any Services on the due date; or
 - b) Otherwise breach this Agreement and fail to rectify such breach within seven (7) days' notice; or
 - c) the Customer cancels delivery of the Services; or
 - d) Commit an act of bankruptcy; or

- e) Allow a trustee in bankruptcy or receiver and manager to be appointed to the Customer or any of the Customers property; or
- f) Allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against the Customers property; or
- g) Is a Contractor; and
 - i. Proceedings are commenced to wind up the customer or any of the customers subsidiaries; or
 - ii. A controller, receiver, administrator, liquidator or similar officer is appointed to the Customer or in respect of any part of the Customers property, then ACME CASE and our agents may enter upon the Customers premises (doing all that is necessary to gain access) where Services supplied under this contract are situated at any time and retake possession of any or all of the Services we have supplied to the Customer;

11.11 ACME CASE reserves the right to resell the Services concerned and terminate this Agreement.

12. Customer Specific Stock

Where ACME CASE has purchased stock on behalf of the Customer for purchase by the Customer over time and the Customer does not comply with the agreed timeframe(s) for purchase (or 30 days' notice from ACME CASE in the absence of an agreed timeframe) then at ACME CASES' option any one or more of the following may apply:

- a. ACME CASE is entitled to charge a storage fee for such stock;
- b. ACME CASE may invoice the Customer for the whole (or any part) of the stock; and
- c. ACME CASE may arrange for the stock to be destroyed or otherwise disposed of (or used) in the event that the Customer fails to pay for and collect or take delivery of the stock, and all costs so incurred shall be a debt due to ACME CASE by the Customer.

13. Pick ups

Customer acknowledges orders advised as "pickups" must be collected within 10 business days, post confirmation of completed. Storage charges will apply thereafter based on a 1200mm x 1200mm x 1200nn base model unit per day, or part thereof, billed weekly.

14. Confidential Information

- 14.1 The Customer will keep confidential all procedures, processes, techniques, specifications and technical data concerning any Services or Services and the

manufacture and utilisation of any Services or Services, and any trade secrets and any other information relating to any Services or Services (Confidential Information).

- 14.2 The Customer will not disclose or use the Confidential Information unless such disclosure or use is specifically authorised by ACME CASE. The Customer will take all reasonable precautions to prevent such disclosure or use.
- 14.3 The Customer acknowledges and agrees that it has no right or licence to use any of the Confidential Information.

15. Liability

- 15.1 Nothing in these Terms and Conditions limits, excludes or restricts the Customer's rights under the Competition and Consumer Act 2010 (Cth) or any other law that may apply.
- 15.2 Where the consumer guarantees apply to the provision of the Services or Services under these Terms and Conditions and where the Services or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, ACME CASES' liability for a failure to comply with such guarantees, is limited, at ACME CASES' option, to the repair or replacement of the Services or the cost of replacing or repairing the Services, or the supply of the Services again or the cost of having the Services supplied again.

16. Personal Property Securities Act 2009 (Cth) (PPSA) Registration

- 16.1 The Customer agrees that ACME CASE will have a Purchase Money Security Interest (as defined in the PPSA) in any products or other equipment supplied to the Customer under these Terms or any related order or contract. ACME CASE may register any security interest contemplated by these Terms and/or any related order or contract on the PPS Register (as defined in the PPSA).
- 16.2 The Customer must supply ACME CASE with any information and take any steps ACME CASE requires for the purposes of effecting and enforcing such registration. The Customer irrevocably and unconditionally waives its right to receive any notice from ACME CASE in connection with the registration.
- 16.3 The Customer will not allow a security interest to be created or registered over the products in priority to the security interest held by ACME CASE. The Customer agrees that any action taken by ACME CASE in relation to the Customer's security interest in the products is at the cost of the Customer.
- 16.4 The parties agree that for the purposes of section 115 of the PPSA, nothing in sections 95, 121(4), 125, 130 (to the extent that it requires ACME CASE to give

any notice to the Customer), 132(3)(d), 132(4) and 135 of the PPSA will apply to any collateral arising from or in connection with these Terms and/or any related order or contract. Notwithstanding section 275 of the PPSA, the parties further agree to keep confidential the contents of these Terms and related material.

17. Delivery

The Contractor shall not be bound to deliver any goods except to the Customer or a person authorised in writing by the Customer to receive such goods but may at its discretion.

18. Storage

- 18.1 After receipt of the goods the Customer will provide an inventory of the goods received.
- 18.2 Where the goods have been stored for a period exceeding 7 days or any longer period agreed upon in the Quotation, the Contractor may change the storage charges from time to time by giving prior written notice to the Customer.
- 18.3 The Customer shall be entitled upon giving to the Contractor of reasonable notice, to uplift the goods in storage and the Contractor shall be entitled to make a reasonable charge thereof.
- 18.4 The Customer shall remove from storage within 28 days or any longer agreed period after written notice by registered or certified mail or requirement to do so given by the Contractor to him/her.
- 18.5 In the event of failure by the Customer to do so, the Contractor may (without prejudice to any other rights or obligations which the Contractor may have under this Contract or otherwise at law) sell all or any of the goods by public auction (or if this is not reasonably practicable) by private treaty and apply the net proceeds in satisfaction of any amount owing to the Contractor and hold the balance (if any) on account of the Customer.

19. Charges Payments and Refunds

- 19.1 All charges payable to Contractor under this Contract are payable by the Customer in advance as specified by the Contractor from time to time and in the event that any charge made by the Contractor shall not be paid within the date set for payment the Contractor shall be entitled to charge a 'late payment' fee of \$3.00 per calendar day until the account is cleared in full. This is a default clause and should not be interpreted as an offer of credit.
- 19.2 Deposits may be requested by the Contractor and any such deposit requested is payable at the time of booking the removal. Failure to pay the

deposit may result in delay or cancellation of requested services. Deposits are non-refundable.

- 19.3 Cancellation fees will be incurred when the customer cancels a job or the date changes with less than 2 full working days' notice. The Contractor may agree to waive cancellation fees at its discretion.
- 19.4 Cancellation fees are a minimum of \$250.00 per booking or 70% of the booking value for bookings under, at the Contractor's discretion. Cancellation fees will be withheld from any deposit (or pre-payment) made by the Customer and any balance returned to the Customer via the same payment method employed by the Customer.
- 19.5 All goods received by the Contractor are subject to a general lien for all moneys owing to the Contractor hereunder and such lien will continue notwithstanding that any portion of such goods has been delivered to the Customer or dealt with by the Contractor pursuant to its lien.
- 19.6 In the event of the Contractor exercising its lien against any goods the liability of the Customer in respect of storage of such goods shall continue until the same are delivered. If any amount payable hereunder by the Customer shall be outstanding for a period of 26 weeks after the same shall become due the Contractor may in respect of all or such or part of the goods in respect of which such charges have accrued give notice to the Customer of its intention to sell such goods.
- 19.7 If the amount due is not paid within 1 month after the giving of such notice the Contractor may sell the goods or any part thereof (and if necessary break open any container or package) by public auction or by private treaty and may apply the proceeds of sale firstly towards payment of the expenses of such sale and secondly towards payment of any amount owing to the Contractor and shall pay any balance remaining to the Customer or as required by law.
- 19.8 The Contractor will not become liable in any way for or in respect of any act or omission of any auctioneer engaged by it.
- 19.9 Where the work initially requested by the Customer to be undertaken varies from the work for which the Quotation is given (for instance, as to the nature or quantity of goods to be carried, whether any goods are required to be detached, dismantled, secured, assembled or installed, the nature or location of the premises from or to which the goods are to be carried, the facilities available for the packing, where applicable, or loading or unloading, or the times or dates upon which the goods are to be carried), the Contractor shall be entitled to make a reasonable additional charge for that, but otherwise these conditions and the Quotation shall continue to apply to the work.
- 19.10 The Contractor shall also be entitled to recover from the Customer any amount which he is required to pay to a third party (other than a person to

whom any part of the work to be performed hereunder is sub-contracted) to obtain or effect delivery of the goods.

- 19.11 Any payment for services not delivered (excluding deposits) will be refunded within 5 business days.

20. Risk

If the Contractor shall be requested to deliver any goods for shipment or despatch by road, rail, sea or any air service the responsibility of the Contractor under this contract shall cease when the goods are delivered to the person or organisation operating such road, rail, sea or air service or to any place specified by such person or organisation for the receipt of goods.

21. Liability for Loss and Damage

- 21.1 The Contractor shall not be liable for any loss or damage caused by or arising from a) fire, overturning, collision road or rail accident involving the conveying vehicle, b) theft, or c) mishandling, incorrect loading or unloading or stowage of any vehicle, the method by which it is driven or through any other cause whatsoever.
- 21.2 The Contractor shall not be liable for any loss, failure to produce or damage caused by any strike, labour trouble, act of God, flood, storm, tempest or explosion, rot, rust, burglary or the breaking of any building, any railway, road, marine or air accident or delay, mechanical breakdown, act of third parties or causes beyond the control of the Contractor nor for anything arising as a consequence thereof.
- 21.3 The Contractor shall not be liable for loss of, failure to produce, or damage whatsoever caused to:
- a. any article contained in any piece of furniture, package, bundle, case or container not both packed and unpacked by the Contractor or its employees.
 - b. any plates, jewellery, money, trinket, picture or other article of special value unless contained in a sealed packet unless notice of the contents of such packet has been given in writing to the Contractor before the same is received by it;
 - c. any goods removed from or to any premises in which there are at the time of removal workmen other than employees of the Contractor or the Customer.
 - d. any mechanical, electrical or electronic instrument (including internal workings), device or appliance or any other article which is brittle in nature or apparently defective or in such condition that it cannot be removed

without risk or damage or any article of a perishable nature including any leather or hide covering or imitation thereof.

- e. any RTA (ready to assemble) furniture that is not disassembled by the owner prior to transportation this includes trolley BBQ's and stands from flat screen TV's.
- f. any items chosen to be transported by the client in plastic containers, including plastic containers used in the transportation.

21.4 The liability (if any) of the Contractor for any loss, failure to produce or damage howsoever caused shall be limited to \$200.00 in respect of any one complete case, bundle, package, or container or in respect of any single item not otherwise referred to herein (including any piece of furniture) and its contents or in respect of any one pair, set, suite or service (including plated goods and other valuables) or any other articles not being in such a case, bundle, package or container but such liability shall not in any event exceed the cost of repair or replacement. The Contractor shall be entitled instead of paying to repair or replace any item. The total liability (if any) of the Contractor shall not exceed the total of \$200.00 in respect of all goods removed or stored pursuant to this Contract.

21.5 Any claim for loss or damage to goods or property must be made in writing to the Contractor within 2 working days after the date of delivery or the date upon which such goods would ordinarily have been delivered. In the event that any claim is not made within such period, liability (if any) of the Contractor hereunder shall thereupon cease.

22. Damage and Liability: Private Carriage

22.1 Notwithstanding any condition herein purporting to limit or exclude the liability of the Contractor, where the Contract involves the transportation of goods otherwise than for the purpose of a business, trade, profession or occupation carried on or engaged in by the person to whom the goods are transported, the Contract shall be subject to the warranty or warranties implied by the Competition & Consumer Act 2010 as amended and, in particular, the warranties by the Contractor that such transportation will be rendered with due care and skill and the following conditions of this clause 11 shall apply.

22.2 Neither party shall be liable to the other for any loss or damage (direct or consequential) occasioned to the other from any cause beyond the control of the Contractor or the Customer, as the case may be, including delays in transit (unless resulting from want of due care and skill or breach of this Contract by that other), industrial disputes, acts of God, weather difficulties or acts of third parties.

22.3 Any damage caused to goods by reason of defect or inadequate packing or unpacking and if such packing or unpacking is or was undertaken by a person other than the Contractor, its servants, agents or sub-contractors, the Customer shall not be entitled to recover for such damage from the Contractor.

- 22.4 Any claim for loss of or damage to goods under this clause 11 shall be notified by the Customer in writing (or by telephone and later confirmed in writing) the Contractor within a reasonable time after the date of delivery or, in the case of loss, the date upon which the goods would ordinarily have been delivered. The Contractor will have the best chance of locating any misplaced item or ascertaining the cause of damage, if notified within 2 working days of the date on which the goods would have been or were delivered.
- 22.5 At any time for loss or damage to goods under this clause 11, the estimate of the maximum value of the goods set out in the Quotation shall be prima facie evidence that the total value of the goods did not exceed that value at the time of such loss or damage.
- 22.6 In the event of litigation arising between the Contractor and the Customer, the jurisdiction in which such proceedings shall be commenced, heard and determined shall be in the jurisdiction of the registered office of the Contractor at the time of entering into the contract.

23. VALUATION OF GOODS

- 23.1 Where it is necessary to value any goods, the following principles shall be applied and used for determining the current market value of those goods unless there is clear evidence to the contrary:
- a. Items less than 5 years old shall be depreciated from their purchase price (or if this cannot be ascertained, a reasonable estimate of the purchase price) to account for the reduction in their value for age, condition, wear & tear, on the basis of the diminishing value method from the date of purchase or acquisition at the rate of 20% per annum. e.g.: Item is purchased 4 years ago for \$1000. Depreciated value at 20% is $\$1000 \times 0.8 \times 0.8 \times 0.8 \times 0.8 = \409 .
 - b. Items over 5 years old shall be valued at 25% of the current market value of a new item of similar type and function at the time of commencement of this contract.
- 23.2 Valuations obtained in accordance with Clauses 23 a) shall be subject to the following maximum values:
- a. The value of the contents of individual cartons, bags, packages or containers of any type with a value of over \$250 are deemed to be limited to a maximum of \$250 unless the client notifies the Contractor in writing of a higher value prior to pick up.
 - b. The value of all other items, shall be deemed to be limited to a maximum of \$1500 per item unless the client notifies the Contractor in writing of an alternate value prior to pickup.
- 23.3 Nothing in this clause shall operate in any way to extend the liability of the Contractor or to vary clauses 9, 10 or 11.

- 23.4 Dispute Resolution: Where for the purposes of this agreement a Party disagrees with any valuation of goods that has been carried out in accordance with clause 23 a), that party may within 28 days supply any clear evidence of an alternate valuation and the matter shall then be re-assessed by a Director or Manager of the Contractor within a further 28 day period.

24. Force Majeure

In this Clause the "**Event of Force Majeure**" means an event beyond the control of the Authority and the Operator, which prevents a Party from complying with any of its obligations under this Contract, including but not limited to:

- a. Act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- b. War, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- c. Rebellion, revolution, insurrection, or military or usurped power, or civil war;
- d. Contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- e. Riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or
- f. Acts or threats of terrorism.

25. Consequence of Force Majeure Event

- 25.1 Neither the Authority nor the Operator shall be considered in breach of this Contract to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the Effective Date.
- 25.2 The Party (the "Affected Party") prevented from carrying out its obligations hereunder shall give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party.
- 25.3 If and to the extent that the Operator is prevented from executing the Services by the Event of Force Majeure, while the Operator is so prevented the Operator shall be relieved of its obligations to provide the Services but shall endeavour to continue to perform its obligations under the Contract so far as reasonably.

26. Variations

ACME CASE may add to or change these Terms and Conditions provided the updated Terms and Conditions are available to be viewed online at <http://www.ACMECASE.com.au> The Customer will be bound by and agrees to accept any such updated Terms and Conditions.