

## TERMS AND CONDITIONS (PRODUCTS)

### 1. INTERPRETATION

- 1.1 **"Ad Hoc Order"** means an order for any Products(s) that are placed by a Customer without a Quotation (including orders which are placed pursuant to any ordering procedures set forth in any marketing material or on Ark Industries' website).
- 1.2 **"Communication"** means any communication between Ark Industries and a Customer, whether by post, personal delivery, through the use of Ark Industries' website or by any electronic means (which expression includes, fax, email, instant messaging or any other electronic means of communication).
- 1.3 **"Customer"** means the person, firm or organisation who purchases any Product from Ark Industries pursuant to a Sales Contract.
- 1.4 **"Customer Submissions"** means the items which are required to be submitted by the Customer in order to enable Ark Industries to execute or fulfil a Sales Contract.
- 1.5 **"Force Majeure Event"** means an event which:
  - (a) is not in existence as at the commencement date of a Sales Contract;
  - (b) is unforeseeable;
  - (c) is beyond the reasonable control of the Ark Industries (whether to prevent, avoid or remove the same); and
  - (d) which prevents, in whole or in significant/material part, the performance by the Ark Industries of its contractual obligations under a Sales Contract, or which renders the performance of such obligations illegal, dangerous or unsafe, or so difficult or costly as to make such performance commercially unreasonable.
- 1.6 **"Material Acquisitions"** means any third party products or services (including but not limited to stock images and photography) which are procured or acquired by Ark Industries at the request or approval of the Customer in connection with the fulfilment of a Sales Contract.
- 1.7 **"Out of Pocket Expenses"** means any expenses (including but not limiting to travelling expenses) which are incurred by Ark Industries in the fulfilment of a Sales Contract.
- 1.8 **"Product"** means any goods and/or services which are made available from time to time by Ark Industries for purchase.
- 1.9 **"Product Specifications"** means, in relation to any Product, the specifications of such Product whether in relation to style, type, material, quality, size, design, logo, and/or other qualities of such Product.
- 1.10 **"Quotation"** means a quotation issued by Ark Industries for the sale/supply of any Product(s) and includes any Layout of any Product which is the subject matter of such Quotation or any other document(s) ancillary thereto or referred to in such Quotation.

- 1.11 **"Layout"** means, in relation to any Quotation, any image, artwork or other form of visual representation created by Ark Industries in relation to the production and/or sale of such Product(s) which is the subject matter of such Quotation.
- 1.12 **"Sales Contract"** means a contract entered into by Ark Industries and a Customer for the sale and purchase of any Product upon the Customer's acceptance of a Quotation issued by Ark Industries or upon Ark Industries' acceptance of an Ad Hoc Order.

## **2. SCOPE AND APPLICATION OF TERMS AND CONDITIONS**

These Terms and Conditions shall govern the sale and purchase of Ark Industries' Products and shall be deemed incorporated in their entirety in any Sales Contract and shall prevail over any other terms and conditions that may be specified by the Customer unless such terms are explicitly agreed to in writing by Ark Industries.

## **3. PRICES AND PRODUCT INFORMATION**

- 3.1 All prices for Products are quoted in Singapore Dollars and are subject to prevailing GST (Goods and Services Taxes).
- 3.2 Whilst Ark Industries endeavours to ensure that all information provided in any marketing material or on its website (including Product Specifications, prices and availability) are correct and accurate, Ark Industries does not warrant or represent that all information so provided are accurate, complete or up-to-date and any such warranties are hereby disclaimed and excluded to the fullest extent permitted by any applicable laws.

## **4. ACCEPTANCE**

- 4.1 Customers may accept a Quotation issued by Ark Industries by signing the same in acceptance thereof and returning the signed Quotation to Ark Industries. Unless otherwise specified in a Quotation, all Quotations rendered by Ark Industries are not firm and may, pending the Customer's acceptance thereof, be made the subject of withdrawal or changes. The acceptance by a Customer of a Quotation shall be deemed in all respects to have been entered into upon these Terms and Conditions.
- 4.2 An Ad Hoc Order represents an offer to purchase the selected Product(s), and is subject to acceptance by Ark Industries at its absolute discretion. Ark Industries may, in response to any Ad Hoc Order received by it, either provide a Quotation to the Customer or accept or reject any Ad Hoc Order in writing to the Customer. For the avoidance of doubt, any Communication from Ark Industries confirming its receipt of an Ad Hoc Order shall not be deemed or construed in any way as an acceptance of an Ad Hoc Order.
- 4.3 Upon Ark Industries' receipt of a signed Quotation, or upon its acceptance of an Ad Hoc Order, a binding contract for the sale and purchase of any Products forming the subject matter of such Quotation or Ad Hoc Order shall be deemed to be entered into by Ark Industries and the Customer.



## **5. CANCELLATION OF SALES CONTRACTS**

- 5.1 Once entered into, a Sales Contract may not be cancelled by the Customer without the written agreement of Ark Industries.
- 5.2 Ark Industries shall have the right to cancel a Sales Contract without any liability to a Customer in the following circumstances:
- 5.2.1 Where the Sales Contract is made on the basis of any error or mistake on the part of Ark Industries.
  - 5.2.2 Where Ark Industries is unable to procure the materials required to fulfill the Sales Contract.
  - 5.2.3 Where Ark Industries is unable to fulfill any Sales Contract for any reason beyond its reasonable control.
  - 5.2.4 Where Ark Industries is unable to fulfill any Sales Contract for any reason due to acts and/or omissions on the part of the Customer including, without limitation, any failure, refusal or neglect on the part of the Customer to provide any information, Customer Submissions, or approvals/confirmations of samples or artwork requested by Ark Industries such that the Sales Contract cannot be fulfilled either in a timely manner or at all.
  - 5.2.5 Where the Sales Contract is made on the basis of any error or mistake on the part of the Customer or where the Customer has provided any false, inaccurate, misleading and/or erroneous information to Ark Industries in relation to any Sales Contract.
  - 5.2.6 Where the Customer breaches any of its obligations under these Terms and Conditions, or fails to comply with the requirements and/or instructions of Ark Industries to remedy the same either in a timely manner or at all.
  - 5.2.7 Where the Customer fails to collect or accept delivery of any Products purchased.
  - 5.2.8 Where the Customer fails to tender any payment (including but not limited to any advance payment or deposit) in accordance with the terms of a Sales Contract.
- 5.3 In the event that a Sales Contract is cancelled:
- 5.3.1 In the case of a cancellation made pursuant to Clause 5.2.1, 5.2.2, or 5.2.3, Ark Industries shall either:
    - (a) refund to the Customer any deposit or advance payment made in respect of the Sales Contract so cancelled; or
    - (b) issue a credit note to the Customer for the amount of any deposit or advance payment made to Ark Industries under the Sales Contract.

**This shall be the Customer's sole and exclusive remedy in the event of a cancellation of a Sales Contract pursuant to Clause 5.2.1, 5.2.2, or 5.2.3.**

- 5.3.2 In all other cases, the Customer shall be liable for (and Ark Industries shall accordingly be entitled to invoice the Customer for):
- (a) where work has not yet commenced in the fulfillment of a Sales Contract, a cancellation fee of S\$300 or 30% of the total value of the Sales Contract whichever is higher, as liquidated damages to Ark Industries; or
  - (b) where work has already commenced in the fulfilment of the Sales Contract but is not yet completed:
    - (i) the cost of work or materials which have gone into the production of the Products;
    - (ii) the cost of any Material Acquisitions;
    - (iii) the reimbursement of any Out of Pocket Expenses; and
    - (iv) such further or other damages and/or losses (including loss of profits) as may have been suffered or incurred by Ark Industries as a result of the cancellation; or
  - (c) where work in the fulfillment of the Sales Contract has been completed, the full amount due in respect of the Sales Contract.

Ark Industries shall be entitled to offset or otherwise deduct from any advance payment or deposit paid by the Customer such amount as shall be sufficient to meet the payments due to Ark Industries pursuant to Clause 5.3.2.

## **6. CUSTOMER SUBMISSIONS AND EXECUTION OF SALES CONTRACTS**

- 6.1 Ark Industries will proceed to perform the Sales Contract only after receiving:
- 6.1.1 any information and Customer Submissions (which may include, without limitation, the submission of print-ready files of artwork or any materials to be used for the fulfillment of any Sales Contract) requested for by Ark Industries in order to fulfil the Sale Contract; and/or
  - 6.1.2 the Customer's approval/confirmation of any Layouts, proofs or artwork or samples produced by Ark Industries; and
  - 6.1.3 the payment of any deposit or advance payment.
- 6.2 The Customer warrants that all artwork and materials supplied by the Customer to Ark Industries (whether by way of Customers Submissions or otherwise) shall be free from error or defect, and that the use thereof by Ark Industries in the fulfillment of any Sales Contract shall not infringe any third party rights or otherwise violate any applicable laws. The Customer shall defend, indemnify and hold Ark Industries harmless from and against any and all claims, actions, suits, demands, assessments, or judgments, and any and all losses, liabilities, damages, costs, and expenses (including, without limitation, legal fees, accounting fees, and investigation costs to the extent permitted by law), whether or not involving a third party claim, which may be asserted against or incurred by Ark Industries as a result of any breach by the Customer of any of its warranties herein.
- 6.3 Without prejudice to Clause 6.2, Ark Industries shall have the right to refuse any artwork submitted by the Customer which it determines (in its absolute discretion) to be unlawful,



inappropriate or distasteful in nature, or to require the Customer to rectify any errors detected in any print-ready files of artwork submitted to Ark Industries.

- 6.4 Where a Product sample is requested for by the Customer, such sample may (subject to any time constraints) be provided to the Customer at the Customer's cost (based on Ark Industries' quoted prices for such sample) save where Customer's order exceeds a quantity exceeding **100** pieces. Each additional sample provided to the Customer shall be chargeable to the Customer (based on Ark Industries' quoted prices for such sample) regardless of the quantity ordered, unless otherwise waived by Ark Industries. No Product sample will be provided for urgent orders with short lead time (as determined by Ark Industries). For the avoidance of any doubt, the Customer shall be liable for any cancellation charges pursuant to Clause 5.3.2(b) in the event that a Sales Contract is cancelled following the provision of any Product sample.
- 6.5 Ark Industries shall not be liable in any way to the Customer for any loss or damage to any Customer Submissions.
- 6.6 Ark Industries shall not be liable in any way to the Customer in the event of any delay on the part of Ark Industries in fulfilling a Sales Contract by reason of:
- 6.6.1 the late submission of any Customer Submissions;
  - 6.6.2 any errors contained in any Customer Submissions;
  - 6.6.3 the rejection by Ark Industries of any Customer Submissions pursuant to Clause 6.3;
  - 6.6.4 changes by the Customer to any Layout or Customer Submissions;
  - 6.6.5 any changes which deviate from any Layout, Product sample, or proof of artwork previously approved/confirmed by the Customer;
  - 6.6.6 any changes to any Sales Contract (including any agreed Product Specifications); or
  - 6.6.7 any failure on the part of the Customer to provide Ark Industries in a timely manner with any confirmations, approvals, information and/or instructions requested by Ark Industries.

## **7. DELIVERY OF PRODUCTS**

- 7.1 Products may, at the Customer's option, be delivered to the Customer at Ark Industries' premises (self-collection) or delivered to the Customer at such location in Singapore as the Customer may specify. Local delivery charges will be imposed per location unless the value of the Sales Contract exceeds **S\$1,000.00 (exclusive of GST)**.
- 7.2 For orders, at the Customer's request, to be delivered in multiple delivery trips, additional local delivery charges per trip will be imposed and quote separately.
- 7.3 For Products which are required to be delivered overseas, the Customer shall be responsible for making its own freight/shipping arrangements unless otherwise agreed by Ark Industries. Ark Industries may (but shall not be obliged) to arrange for the shipment of any Products overseas at the Customer's request and cost provided always that Ark Industries shall in no event be liable for the Products which are damaged or lost in transit. For the avoidance of doubt, delivery of all Products to the Customer shall be deemed to occur once the Products are placed in the custody or possession of the freight forwarder or shipper.
- 7.4 Products will be delivered in either cartons or strong poly bags depending on the quantity unless otherwise agreed under the terms of in any Sales Contract.

- 7.5 For special packaging request, Customer shall specify the requirements and provide the necessary materials. In the event that Ark Industries fulfills any packaging request, Ark Industries' charges in relation thereto shall be deemed to be included in the Quotation, and correspondingly, to form part of the Sales Contract.
- 7.6 In the event that there is a shortfall in the quantity of Products delivered under a Sales Contract, Ark Industries shall either:
- 7.6.1 make good such shortfall at the earliest opportunity;
  - 7.6.2 provide the Customer with a credit note representing the price of the shortfall Products; or
  - 7.6.3 refund to the Customer the price of the shortfall Products.

**This shall be the Customers sole and exclusive remedy in the event of a shortfall in the quantity of Products delivered under a Sales Contract.**

- 7.7 Whilst Ark Industries endeavours to ensure that all Products are produced to a high standard, errors in production may still occur. The Customer shall not be entitled to reject the delivery of any Products which do not conform to any agreed Product Specifications or which are defective unless such Products exceed **10%** of the total quantity of Products ordered under the Sales Contract. The Customer shall notify Ark Industries of any non-conforming or defective Product within 7 days of delivery failing which all Products delivered shall be deemed to be delivered in good order. Ark Industries shall, upon the its verification of the validity of the Customer's claim, either:
- 7.7.1 make good such non-conformance or defect at the earliest opportunity;
  - 7.7.2 provide the Customer with a credit note representing the price of the non-conforming or defective goods; or
  - 7.7.3 refund to the Customer the price of the of the non-conforming or defective goods.

**This shall be the Customers sole and exclusive remedy in the event of non-conforming or defective Products delivered under a Sales Contract.**

## **8. PAYMENT**

- 8.1 Unless otherwise agreed or specified by Ark Industries, the Customer shall make payment in settlement of any Products delivered in full either by cash, cheque or bank transfer to Ark Industries' designated bank account upon delivery of the Products failing which the Customer shall be liable to pay to Ark Industries interest thereon at the **monthly rate of 1.5%** of the outstanding amount from the date such payment is due to the date on which such payment is received by Ark Industries (whether before or after judgment).
- 8.2 Ark Industries shall have the right to impose, and the customer shall be liable to pay, charges in addition to those stated in a Sales Contract in the following circumstances:
- 8.2.1 Where the price of any Products to be supplied under a Sales Contract is based on the cost of any raw materials and/or any other underlying goods and/or services, and



there has been an increase in the cost of such raw materials and/or underlying goods and/or services following the date of the Sales Contract.

- 8.2.2 Where the price of any Products to be supplied under a Sales Contract is based on a stated quantity of Products ordered, and there is a change to the quantity ordered which is less than that stated in the Sales Contract.
- 8.2.3 Where additional work has to be performed by Ark Industries on account of any errors or defects in any Customer Submissions.
- 8.2.4 Where changes are made to the Product Specifications at the Customer's request (including alterations in the design, logo, fabric or any other changes which deviate from any artwork submitted by or previously approved/confirmed by the Customer).
- 8.2.5 On account of Material Acquisitions and/or Out of Pocket Expenses.
- 8.2.6 On account of any other agreed payments.

## **9. RIGHTS IN INTELLECTUAL PROPERTY**

All rights in and to any intellectual property subsisting in works of a creative nature (such as concepts and ideas, sketches, designs, artwork, samples etc.) developed and/or furnished by Ark Industries whether for the purposes of fulfilling a Sales Contract or otherwise shall belong solely to Ark Industries. The Customer shall not claim nor knowingly assist in any claim to any right, title or interest in and to any such intellectual property, or do or knowingly permit any act which is likely to prejudice the rights, title or interests of Ark Industries in and to any of such intellectual property.

## **10. EXCLUSION OF LIABILITY**

Ark Industries shall not be liable in any way to a Customer for:

- 10.1.1 any indirect or consequential loss or damage;
- 10.1.2 any loss of revenue, profits, goodwill, anticipated savings or opportunity; or
- 10.1.3 any loss, damage or destruction of any Customer Submissions.

## **11. FORCE MAJEURE**

Ark Industries shall not be responsible for any failure of or delay in the performance or discharge of its obligations under this Agreement if such failure or delay is caused by a Force Majeure Event. Without prejudice to Ark Industries' rights under Clause 5.2, all time periods for the performance by Ark Industries of all and any of its obligations under this Agreement or under any relevant Sales Contract shall be deemed extended by the same period (or number of days) during which the Force Majeure Event continues Provided Always that if the Force Majeure Event continues for a period exceeding 3 months, the Customer may at its option cancel the Sales Contract affected by the Force Majeure Event.

**12. ENTIRE AGREEMENT**

The terms and conditions set forth in this Agreement and each Sales Contract constitute the final and complete agreement between the Parties as to the subject matter thereof and supersedes any prior agreement in respect thereof and/or any understanding, representation, commitment, undertaking or promise made by or between the Parties in the course of any discussions or negotiations concerning this Agreement.

**13. GOVERNING LAW AND DISPUTE RESOLUTION**

These Terms and Conditions shall be governed by the laws of Singapore and the Parties irrevocably agree that the courts of Republic of Singapore shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with any Sales Contract.