

# TERMS AND CONDITIONS IN RESPECT OF CUSTOM MINTED PRODUCTS

## 1. DEFINITIONS

In these Terms and Conditions in Respect of Custom Minted Products, unless the contrary intention appears:

**Agreement** means a written binding contract of sale between, the Buyer and the Royal Australian Mint (Seller). The Agreement is entitled "Agreement for Custom Minted Products" and incorporates these Terms and Conditions in Respect of Custom Minted Products.

**Associated Material** means any promotional material, merchandising, publications and associated material offered, distributed, sold or used in connection with the Coins or numismatic products;

**Buyer** means the legal entity purchasing the custom minted products from Seller. Where there is a signed Agreement between the Parties, the Buyer is listed as the second Party in **paragraph 1** of the Agreement.

**Certificate of Authenticity** means the certificate which provides a summary of the Coin Design and authenticates the Coin specifications set out in **Item A [Specifications and Design of Coins]** of the Agreement or Quote.

**Currency Determination** in relation to an Australian Coin means a determination made under section 13 or 13A of the *Currency Act 1965* (including the former Currency Regulations). In relation to a Coin issued by a country other than Australia, 'Currency Determination' means a legal instrument issued by the relevant authority, the effect of which is to determine the Coins as legal tender and introduce them into circulation.

**Coin(s)** means the coins, medallions, ingots or other custom minted product listed in **Item A [Specifications and Design of Coins]** of the Agreement or Quote.

**Collection Date** means the date specified for collection of each consignment of Coins as specified in **column 5** of the Table in **Item C** of the Agreement or Quote; or as extended in writing by the Parties. The delivery shall be considered completed from such point in time in which the Coins are made available for collection Ex works (INCOTERMS 2010).

**Confidential Information** means confidential information of a Party which relates to the subject matter of the Agreement or Quote but excludes:

- (a) information that becomes public knowledge other than by breach of the Agreement or these Terms and Conditions or by any other unlawful means;
- (b) information that is in the possession of the other Party before the date of its receipt from the Party disclosing the information; or
- (c) information that has been independently developed by the other Party or which is or was acquired by that Party from a third Party having the right to disclose it to that Party.

**Designs** means the images, drawings or other Intellectual Property to be applied to the Coins and any Master Tools and/or Working Dies required for their production.

**Excusable Delay** means a circumstance beyond the reasonable control of the Parties and which results in a Party being unable to observe or perform on time an obligation under the Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, fires and any natural disaster; or
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

**Ex works** has the same meaning given to it under Incoterms 2010 and requires a freight forwarder to be appointed by the Buyer for collection from the Seller.

**Freight** means the total cost of transporting the Coins from the Seller to the Buyer's addresses.

**Intellectual Property** means any invention, discovery or new process whether patentable or not, patent, copyright and associated moral rights, registered or unregistered trade mark, design, trade, business or company names, or other property rights or any other rights to the registration of such rights, whether created in Australia or elsewhere;

**Master Tools** means the master set of tools produced by the Seller bearing the Designs which are required for the manufacture of the Working Dies.

**Material** means anything in relation to which Intellectual Property Rights arise.

**Minimum Acceptable Standard** means the minimum standard for the Coins as established in accordance with these Terms and Conditions.

**Mint Plain Text Logo** means the logo as set out in the Royal Australian Mint Plain Text Logo Guidelines, which is available on the Internet at <http://www.ramint.gov.au/about/policies/downloads/Royal%20Australian%20Mint%20Plain%20Text%20Logo%20Guidelines.pdf>

**Order** means the order for Coins referred to in **Item C** [*Order Quantity*] of the Agreement or Quote; or any subsequent order that is agreed to in writing by the Parties.

**Packaging** means the packaging of the Coins described in **Item B** [*Packaging*] of the Agreement or Quote.

**Quote** means the document entitled 'QUOTE' and submitted by the Royal Australian Mint to the Buyer in relation to the proposed production and supply of custom minted products. The quote is an invitation to treat only and not an obligation to sell or offer. The quote incorporates these Terms and Conditions.

**Release Date** means the date that the Coins are made available for sale to the public.

**Sample Coins** means the Coins specified in **Item D** [*Production of Coins*] of the Agreement or Quote.

**Seller** means the Commonwealth of Australia as represented by the Royal Australian Mint.

**Terms and Conditions** means these Terms and Conditions in Respect of Custom Minted Products, as amended from time to time, and includes documents incorporated by reference.

**Party** means either the Buyer or the Seller.

**Prices** are in Australian Dollars unless otherwise specified.

**Working Dies** means the tools produced by the Seller from the Master Tools bearing the Designs in whole or in part which in turn are required for the manufacture of the Coins.

## 2. INTERPRETATION

- 2.1 In the Agreement and these Terms and Conditions, unless the contrary intention appears:
- (a) words in the singular include the plural and words in the plural include the singular;
  - (b) words importing a gender include any other gender;
  - (c) the clause headings are for ease of reference only and shall not be relevant to the interpretation of the provisions to which they refer;
  - (d) a reference to a clause number includes a reference to its sub clauses;
  - (e) a reference to a clause refers to a clause in these Terms and Conditions;
  - (f) a reference to a paragraph refers to a paragraph in the Agreement;
  - (g) a reference to an Item refers to paragraphs A-M of the Agreement or Quote.

- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) if there is any inconsistency between these Terms and Conditions, the Agreement and any other document incorporated by reference, to the extent of any such inconsistency, the order of priority will be:
  - i. the Agreement for Custom Minted Products;
  - ii. the Terms and Conditions in Respect of Custom Minted Products;
  - iii. the Quote;
  - iv. any other document incorporated by reference in the Terms and Conditions in Respect of Custom Minted Products.

### 3. PRODUCTION AND SUPPLY OF COINS

- 3.1 If the Seller, at its absolute discretion, signs the Agreement, the Seller agrees to:
- (a) produce and supply to the Buyer Coins having the specifications and Designs set out in **Item A [Specifications and Design of Coins]** and **Item B [Packaging]** in accordance with the quantity specified in **Item C [Order Quantity]** of the Agreement or Quote;
  - (b) comply with the procedures for the production and supply of the Coins specified in **clause 3.5** and **Item D [Production of Coins]** of the Agreement or Quote;
  - (c) subject to **clause 10.3**, comply with the timeframe for the manufacturing of the Coins specified in **Item E [Timeframes]** of the Agreement or Quote; and
  - (d) the Seller will provide finished coins for collection by the Buyer Ex-works at the address specified in **Item F [Address for Collection]** of the Agreement or Quote subject to these Terms and Conditions.
- 3.2 If the Seller, at its absolute discretion, signs the Agreement, the Parties agree to comply with any additional requirements in relation to the production and supply of the Coins set out in **Item G [Special Conditions]** of the Agreement or Quote.
- 3.3 **The Buyer must comply with all of its obligations under the Agreement including without limitation any requirements in these Terms and Conditions, the Quote and any other documents incorporated in these Terms and Conditions by reference.**
- 3.4 **The Buyer acknowledges that:**
- (a) **the Seller is not bound to fulfil any Order where a required Currency Determination has not been issued; and**
  - (b) **the Seller will not be liable for any costs or expenses directly or indirectly incurred by the Buyer in connection with the Agreement or Quote; and**
  - (c) **the Seller may, prior to Currency Determination and/or coining trials, change the Coin Designs in consultation with the Buyer.**
- 3.5 Subject to the Seller signing the Agreement, and prior to production of the Coins in the quantities specified in the Agreement or Quote:
- (a) the Seller shall provide the Buyer with two samples of each Coin listed in **Item A [Specifications and Designs of Coins]** of the Agreement or Quote, for inspection and approval by the Buyer;
  - (b) the Sample Coins shall be mailed to representatives of the Buyer, whose details are described in **Items L [Addresses and Contact Details]** of the Agreement or Quote;
  - (c) the Buyer shall check whether the Sample Coins meet the specifications set out in the Agreement or Quote. If the Sample Coins meet the specifications, these will be established as the *Minimum Acceptable Standard for the Coin*;
  - (d) the Buyer shall notify the Seller by electronic email of its approval or otherwise of the Sample Coins within 10 days of their receipt of the sample Coin from the Seller;
  - (e) if the Buyer approves of the Sample Coins it must return one sample Coin to the Seller within 10 days of its receipt;
  - (f) if a Sample Coin is not approved by the Buyer, the Buyer will advise the Seller in writing of any changes within 10 days of receiving the sample Coins from the Seller;
  - (h) the production of Coins in the quantities stated in the Agreement or Quote shall not commence until the Buyer approves in writing the final sample of that Coin.

- 3.6 The Seller shall not be obliged to comply with the Dates specified in **Item E [Timeframes]** of the Agreement or Quote if the Seller does not receive approval of the Sample Coins within 10 days of the Buyer receiving those Coins from the Seller.
- 3.7 A Sample Coin shall be deemed to be received by a Party upon the expiration of 5 business days after the date upon which the Sample Coin was sent to that Party.

#### 4. FEES

- 4.1 The Buyer agrees:
- (a) to pay the Seller the fees specified in **Item H [Fees]** of the Agreement or Quote for the production and supply of the Coins in accordance with the procedure specified in **Item I [Payment of Fees]** of the Agreement or Quote; and
  - (b) to pay the Seller the fees for any additional activities as may be provided in **Item J [Additional Fees]** of the Agreement or Quote.
  - (c) that where the Buyer places an Order for less than the minimum quantity of Coins set out in **Item C [Order Quantity]** of the Agreement or Quote, the Buyer must nevertheless pay to the Seller the full Fees that apply to the minimum quantity.
- 4.2 The Parties agree that the fees quoted are Ex-works in accordance with Incoterms 2010.
- 4.3 The Seller shall not be obliged to supply the Coins or to comply with the dates specified in **Item E [Timeframes]** if the Buyer does not pay the fees in **clause 4.1** within 30 days of an invoice being issued by the Seller.

#### 5. REASONABLE ASSISTANCE

- 5.1 The Buyer shall provide the Seller with all reasonable assistance and information necessary for the Seller to satisfy its obligations under the Agreement.

#### 6. MARKETING AND DISTRIBUTION

- 6.1 Subject to the Seller, in its absolute discretion, signing the Agreement, the Buyer and the Seller agree to market and sell the Coins in accordance with the terms and conditions set out in **Item K [Marketing and Distribution]** of the Agreement or Quote.

#### 7. SECURITY OF THE COINS, MASTER TOOLS AND WORKING DIES

- 7.1 Within six months of a Coin being completed for the Agreement, the Seller shall destroy any Coins that do not conform to the specifications set out in **Item A [Specifications and Design of Coins]** of the Agreement or Quote in such a way that they cannot be put into circulation.
- 7.2 Where the Seller destroys any Coins or Working Dies in accordance with **clause 7.1**, it will own and be entitled to retain and reuse any metal recovered from this process.

#### 8. USE OF THE SELLER'S INTELLECTUAL PROPERTY

- 8.1 The Buyer acknowledges and agrees that it must obtain the prior written approval of the Seller before using any Australian Government logos or any Material, trade marks or logos (including, without limitation, the Mint Plain Text Logo or the Royal Australian Mint name) that are the subject of Intellectual Property Rights of the Seller.
- 8.2 Subject to **clause 8.1**, the Buyer must at all times:
- (a) observe and abide by the instructions, requirements, directions, specifications and policies issued by the Seller in relation to advertisement and promotion of the Coins; and
  - (b) adhere to any instructions issued by the Seller relating to the representation of the Coins and reproduction and use of images of the Coins or Commonwealth of Australia

branding material.

8.3 Subject to **clause 8.1**, the Buyer must comply with any branding requirements relating to the Coins, Packaging and Associated Material that may be notified to it from time to time by the Seller including in particular those requirements set out in **Item B [Packaging]** of the Agreement or Quote and *Logo and Branding Guidelines* available on the internet at [http://www.ramint.gov.au/about/policies/logo\\_and\\_branding.cfm](http://www.ramint.gov.au/about/policies/logo_and_branding.cfm)

8.4 The Buyer acknowledges that Material, trade marks and logos that are the subject of Intellectual Property Rights of the Seller may be changed or replaced by the Seller at any time without notice or penalty.

## 9. CONFIDENTIALITY

9.1 Neither Party shall reveal or disclose to any third Party the Confidential Information of the other Party without the prior written permission of that other Party.

9.2 A Party shall not be in breach of **clause 9.1** in circumstances where it is required by law or requested by a Commonwealth Minister, or by a House or a Committee of the Parliament of the Commonwealth of Australia to disclose the other Party's Confidential Information.

## 10. COLLECTION AND RISK

10.1 Subject to the Seller signing the Agreement, the Seller will make any Coins available for collection by the Buyer at the address specified in **Item F [Address for Collection]** of the Agreement or Quote. The delivery shall be considered completed from such point in time in which the Coins are made available Ex works.

10.2 The risk of loss or damage to the Coins shall be transferred to the Buyer in accordance with the delivery terms Ex works.

10.3 Any time or date quoted by the Seller for availability of Coins Ex Work is an **estimate only** and the Seller shall not be liable for any loss or damage, however arising, as a result or consequence of any failure to supply all or part of the Order on a particular date or at a particular time, whether Ex works or otherwise.

## 11. TERMINATION

11.1 The Agreement may be terminated:

- (a) upon the provision of written consent to the termination by both Parties; or
- (b) where a Party considers that the other Party has breached any of its obligations under the Agreement, including, without limitation these Terms and Conditions, it may, by notice require that the failure be remedied within the time specified in the notice and, if the failure is not remedied within that time, it may terminate the Agreement immediately by giving a second notice; or
- (c) if any required Currency Determination is not issued within 30 Days prior to the Collection Date of an Order.
- (d) if the Buyer fails to pay an amount due to the Seller by the invoice date;
- (e) if the Buyer comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth) or equivalent international law, or has an order made against it for the purpose of placing it under external administration; or
- (f) if the Buyer, in the Seller's reasonable opinion, engages in any act, or allows any act within its control to be done, which does or will in any way harm, impair or adversely affect the reputation of the Seller or the Seller's Products;
- (g) if the Seller considers that continued operation of the Agreement is not in the best interests of the Seller or the Commonwealth of Australia; or
- (h) if policy or machinery of Australian government necessitate the termination of the Agreement.

- 11.2 If the Seller terminates the Agreement under **clause 11**, the termination will be effective immediately upon valid notice.
- 11.3 As a result of any suspension or termination under **clause 11**:
- (a) the Seller may:
    - i. refuse to fulfil any Order and refuse to facilitate collection of the Coins by the Buyer; and
    - ii. cancel manufacturing and production of any Coins for which payment has not been received in full by the Seller and refund any partial payment received from the Buyer (less any handling or administration fees or out of pocket expenses or fees incurred by the Seller);
    - iii. automatically revoke any licences granted by the Seller in favour of the Buyer, unless otherwise agreed in writing by the Seller;
    - iv. claim ownership of all Coins, sell the Coins and retain all profits from such sale;
  - (b) the Buyer must:
    - i. if directed by the Seller, return all the Seller's Intellectual Property and Confidential Information to the Seller, within a timeframe specified by the Seller;
    - ii. comply with any reasonable directions of the Seller.
- 11.4 **The Buyer will not be entitled to any compensation whatsoever if the Seller exercises its rights to terminate the Agreement under clause 11.**

## **12. DELAY**

- 12.1 **Neither Party shall be liable for any delay or failure to perform its obligations under the Agreement if such delay or failure is due to Excusable Delay.**
- 12.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Excusable Delay, the performance of that Party's obligations will be suspended.
- 12.3 If a delay or failure by a Party to perform its obligations due to Excusable Delay exceeds sixty days, either Party may immediately terminate the Agreement upon providing notice in writing to the other Party.
- 12.4 **If either Party fails to comply with, or delays the performance of, any of its obligations under the Agreement, or if the Parties fail to agree to a matter within the timeframe stated under the Agreement, the Parties will not be required to comply with the timeframe for the performance of its corresponding obligations and will perform those obligations at the earliest available opportunity as determined by each Party taking into consideration its business requirements at the relevant time.**
- 12.5 **If the Buyer fails to make the required deposits or arrange credits the Seller will not be obligated to comply with the Collection Dates and production schedules in the Agreement or Quote.**

## **13. SETTLEMENT OF DISPUTES**

- 13.1 In the event of any dispute between the Parties arising out of or in connection with the Agreement, the Parties shall make best efforts to settle such dispute by negotiation. Any dispute which cannot be settled by negotiation will be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The Place of Arbitration shall be Canberra, Australia. The language of the Arbitration shall be English.

## **14. GENERAL**

- 14.1 Neither Party can assign the Agreement or any right or obligation arising under the Agreement to any third party without the written consent of the other Party.

## **15. JURISDICTION**

- 15.1 This Agreement shall be governed by the law in the Australian Capital Territory, Australia and the Parties submit to the non-exclusive jurisdiction of the courts in that Territory.

## **16. ADDRESSES AND CONTACT DETAILS**

- 16.1 The addresses and contact details of the Parties for all purposes specified in the Agreement are as specified in **Item L [Addresses and Contact Details]** of the Agreement or Quote, or as notified in writing by the Parties.

## **17. ENTIRE AGREEMENT**

- 17.1 The Agreement is the entire agreement of the Parties on the subject matter. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in the Agreement. All representations, communications and Prior Agreements, Quotes and Memoranda of Understanding in relation to the subject matter are merged in and superseded by the Agreement.

## **18. NOTICE**

- 18.1 To be valid, any notice, including but not limited to the termination notice or communication by a Party must be in writing and sent to the other Party's representative as named in **Item L [Addresses and Contact Details]** in the Agreement or Quote. Either Party may change the details of their representatives by notice to the other Party.
- 18.2 Any notice or communication between the Parties must be in English.
- 18.3 A notice, request or other communication is deemed to be effected:
- (a) if delivered by hand – upon delivery to the relevant address;
  - (b) if sent by pre-paid air post – upon expiration of 5 business days after the date upon which it was sent;
  - (c) if transmitted by email to the email address of the recipient, when the email message enters an information system accessible to the recipient;
  - (d) if transmitted by facsimile machine to the facsimile address of the recipient, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient.
- 18.4 A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day.