

# TERMS AND CONDITIONS

## 1. Definitions

In these conditions:

"Conditions" means these Conditions of Sale;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from the Supplier;

"goods" means goods produced by the Supplier for the Customer;

"GST" means any consumption tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a goods and services tax, a broad based consumption or indirect tax and value-added tax;

"Order" means the work required to be done in accordance with the Customer's instructions;

"Quote" means the quote supplied to the Customer by the Supplier specifying the work required to be done and an estimate of the cost for performing the work;

"services" means services supplied by the Supplier to the Customer; and

"Supplier" means Junction Print Group P/L trading as Inkifingus Printers ABN 26 842 391 734, ACN 124 100 625.

## 2. Basis of Contract

2.1 Unless otherwise agreed by the Supplier in writing, the Conditions apply exclusively to every contract for the sale of goods or services by the Supplier to the Customer and cannot be varied or supplemented by any other condition without the prior written consent of the Supplier.

2.2 Any written Quote provided by the Supplier to the Customer concerning the proposed supply of goods or services is valid for 30 days and is an invitation only to the Customer to place an order based upon that Quote.

## 3. Payment

3.1 The Customer must pay for the Goods and Services within 30 days of the date the invoice is issued.

3.2 Credit terms may be provided at the absolute discretion of the Supplier following the Customer completing and submitting the Supplier's standard Credit Application, the terms of which form part of these Conditions.

3.3 The Supplier may issue an invoice for the amount of the Quote before commencing the Order where the Supplier has not previously carried out work for the Customer or where the Supplier considers it prudent to do so;

3.4 The Supplier may, in the event that the Supplier is of the view that completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for proportion of the amount of the Quote (the proportion to be at the Supplier's discretion) and require that proportion of the Quote to be paid in advance of any further work being done.

3.5 If the Order is suspended for more than 30 days at the request of the Customer or as a result of something for which the Customer is responsible, the Supplier may issue an invoice for a particular sum (to be specified by the Supplier) for work already done and for other costs incurred by the Supplier (such as storage costs).

## 4. Pricing

4.1 In addition to the prices for the goods and services, the Customer must also pay to the Supplier the amount of any GST levied on or relating to the supply of the goods or services, and all fees, as charged by the Supplier from time to time, for:

(a) any preliminary work performed at the Customer's request which was not within the reasonable contemplation of the Supplier at the time of supplying the Quote;

(b) additional work required to be done as a result of the Customer changing or modifying its instructions;

(c) having to work from poor copy;

(d) work which involves tables or foreign language and which was not notified to the Supplier before the Quote was prepared;

(e) additional work required to be done as a result of author's corrections, including repagination or reformatting;

(f) for work to be done urgently, including any overtime costs;

(g) handling or storing material or equipment supplied by the Customer for the purposes of the Order;

(h) changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the Customer.

(i) storage of data or goods, packaging, carriage and freight costs and charge including all costs and expenses incurred by the Supplier in removing the Goods from its premises, whether by way of actual or attempted delivery to the Customer.

(j) and insurance costs and charges where insurance is required by the Customer.

4.2 Where there is any change in the costs incurred by the Supplier in relation to the goods or services, the Supplier may vary its prices for goods or services on order to take account of any such changes without notice to the Customer.

4.3 All price lists and prices quoted in respect of goods or services are subject to variation by the Supplier at any time without notice to the Customer.

## 5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:-

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 plus 2 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for all expenses and costs (including legal costs on a solicitor/ own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

(c) cease or suspend for such period as the Supplier thinks fit, supply of any further goods or services to the Customer;

(d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier;

without effect on the accrued rights of the Supplier under any contract.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of the Supplier:

(a) where the Customer is an individual and becomes bankrupt or enters into any schemes of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## 6. Passing of Property

6.1 Until full payment in cleared funds is received by the Supplier for all goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

(a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;

(c) the Customer must keep the goods separate from its goods and maintain the labelling and packaging of the Supplier;

(d) the Customer is required to hold the proceeds of any sale of the goods on trust for the Supplier in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

(e) the Supplier may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

## 7. General Lien

7.1 The Supplier shall, in respect of all sums owed by the Customer to the Supplier, have a general lien on all property of the Customer in the Supplier's possession and may, after 14 days notice to the Customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the Customer's property held by Supplier as aforesaid enjoys copyright protection in favour of the Customer, the Customer hereby grants to the Supplier a licence to exercise the rights conferred on the Supplier under this clause.

## 8. Risk and Insurance

8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately upon dispatch of the goods from the Supplier's premises.

8.2 The Supplier has no obligation to insure any property of the Customer in the Supplier's possession.

## 9. Performance of contract

9.1 Any period or date for delivery of goods or provision of services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

9.2 The Customer acknowledges that whilst the Supplier will make every endeavour to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order ("a discrepancy"). Where a discrepancy occurs the Supplier will adjust the amount charged to the Customer for the Order a pro rata amount to reflect the actual number of items produced.

## 10. Delivery

10.1 The Customer must collect the goods from the Supplier's premises upon being notified by the Supplier that the Goods are ready for collection or agreed as in quotation.

## 11. Liability

11.1 Except as specifically set out herein, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

11.2 If the Supplier submits to the Customer a proof of the Goods the Supplier will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the Customer before the Order was completed.

11.3 The Supplier will not be liable to the Customer for loss, however caused of any data stored on discs, tapes, compact discs or other media supplied by the Customer to the Supplier.

11.4 Subject to Clause 11.5, the Supplier will not be liable for the damage, loss or destruction of any property of the Customer in the Supplier's possession unless the loss or damage is due to the failure of the Supplier to exercise due care and skill in handling or storing the property.

11.5 Subject to Clause 11.6, replacement or repair of the goods or resupply of the services is the absolute limit of the Supplier's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, storage, manufacture, design, merchantability or fitness for purpose of the goods or services or alternatively the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.

11.6 If the Customer does not notify the Supplier of any defect in the goods or services within 7 days after receipt or delivery of the goods or performance of the services, the Supplier will not replace or repair the goods or resupply the services and will not be responsible for any defects in the goods or services.

11.7 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

11.8 The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of goods or services.

11.9 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

## 12. Cancellation

12.1 If, although circumstances beyond the control of the Supplier, the Supplier is unable to effect delivery or provision of goods or services, then the Supplier may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier after that order has been accepted by the Supplier.

## 13. Periodicals

13.1 If the contract between the Supplier and Customer relates to more than one issue of a periodical:

(a) Each issue will, for the purposes of these Terms and Conditions, be considered to be one Order.

(b) Subject to sub-clause (c), a party may not terminate a contract to which these Terms and Conditions apply unless:

(i) in the case of periodicals published weekly or more frequently, that party has given 4 weeks notice of that party's intention to terminate the contract;

(ii) in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given 8 weeks notice of that party's intention to terminate the contract;

(iii) in the case of the periodicals published less frequently than fortnightly, that party has given 13 weeks notice of that party's intention to terminate the contract.

(c) Notwithstanding sub-clause (b), the Supplier may terminate the contract at any time if the Customer is in breach of any provision of these Terms and Conditions relating to payment.

13.2 If, before the Quote is prepared, the Customer does not give the Supplier specific instructions in relation to style, type or layout:

(a) the Supplier may use any style, type and layout which, in the Supplier's opinion, is appropriate, and

(b) the Supplier may charge an additional work required to be done, (including the production of additional proofs) as a result of the Customer subsequently altering the style, type or layout used by the Supplier.

13.3 The Customer must pay for overset matter (being matter produced on the Customer's instruction but not used in a publication for which it was intended). The Customer may instruct the print to retain overset matter for future issues of the publication or to distract the overset matter immediately. The Customer must notify the Supplier within two weeks of completing of the Order of its request. In the absence of an express notice, the Supplier may dispose of the overset matter at its discretion.

13.4 If the Supplier has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by the Supplier from a third party in order to carry out the Customer's instructions:

(a) The Supplier will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such goods and/or services.

(b) The Supplier acquires such goods and/or services as agent for the Customer and not as principal and will have no liability to the Customer in relation to the supply of those goods and/or services must be made directly against the third party.

(c) The Customer must pay for such goods and/or services.

(d) Property in any such goods obtained from a third party and incorporated into the Goods passes to the Supplier at the time of incorporation.

13.5 If the Supplier and the Customer agree that the Customer is responsible for supplying materials or equipment for the purposes of the Order:

(a) the Customer must supply sufficient quantities of materials to allow for spoilage, such a quantity to be specified by the Supplier.

(b) the Supplier will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking.

(c) the Supplier will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Customer.

(d) property in any materials supplied by the Customer and incorporated into the Goods passes to the Supplier at the time of incorporation.

13.6 If the Customer leaves property in the Supplier's possession without specific instructions as to what is to be done with it, the Supplier may, 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

13.7 Drawings, sketches, painting, photographs, designs, typesetting, dummies, models, negatives, positives, blocks engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by the Supplier in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of the Supplier.

## 14. Copyright

14.1 Copyright in all artistic and literary works authored by the Supplier shall be the property of the Supplier.

14.2 The Customer is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by the Supplier for the purposes of the Order however the exercise of such licence shall be conditional upon the Supplier having received all monies due to the Supplier under these Terms and Conditions.

14.3 The Customer warrants that the Customer has copyright in or a licence to authorise the Supplier to reproduce all artistic and literary works supplied by the Customer to the Supplier for the purpose of the Order and the Customer hereby expressly authorise the Supplier to reproduce all and any of such works for the purpose aforesaid;

14.4 The Customer hereby indemnifies and agrees to keep indemnified the Supplier against all liability, losses or expenses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid.

## 15. Moral Rights

15.1 Nothing in these Conditions constitute consent within the meaning of the Copyright Amendment (Moral Rights) Act 2000.

## 16. Electronic/magnetic media

16.1 All discs, tapes, compact discs or other media (other than the media supplied by the Customer) used by the Supplier to store data for the purposes of completing the Order are the property of the Supplier. The Customer cannot require the Supplier to supply to the Customer any data so stored.

16.2 The Supplier will not be responsible for storing any data on discs, tapes, compact discs or other media when the Order has been completed.

## 17. Miscellaneous

17.1 The law of Victoria from time to time governs the Conditions and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.