ALLPRINT GRAPHICS PTY LTD ABN 50 002 665 241
TERMS & CONDITIONS OF TRADING
JULY 2000

1. INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between a printer and customer for the supply of goods and/or services by the printer to the customer.

1.2 Interpretation

In these Terms and Conditions:

"Business Day" means a day on which banks are open for general banking business in the State or Territory in which the printer's premises are located.

"Estimate" means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4).

"Goods" means the final goods produced by the printer by completing the Order.

"GST" means A New Tax System (Goods and Services Tax) Act, 1999.

"Interest Rate" means the aggregate of two per centum (2%) and the rate of interest expressed as a percentage per annum charged by the Commonwealth Bank of Australia from time to time on Overdraft Accounts exceeding One Hundred Thousand Dollars.

"Order" means the work required to be done in order to fulfill the customer's instructions;

"Quote" means the quote described in clause 2.1.

1.3 General

In these Terms and Conditions, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to a clause is a reference to a clause of these Terms and Conditions;

(c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(e) a reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.

1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

1.5 Business Day

If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

(a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and

(b) in all other cases, may be done on the next Business Day.

2. QUOTES

2.1 Printer to supply quote

The printer may if, requested by the Customer, give the customer a quote specifying:

(a) the work required to be done in order to fulfill the customer's instructions;

and

(b) an estimate of the printer's charge for the performance of such work.

2.2 Acceptance by customer

Where the printer has given the customer a Quote:

(a) The printer need not commence work until the Quote has been accepted by the customer.

(b) The customer may accept the Quote by instructing (orally or in writing) the printer to commence work.

(c) Acceptance by the customer of the Quote will constitute acceptance by the customer of these Terms and Conditions.

2.3 Quote evidence of instructions

If a written Quote is accepted by the customer, the work the subject of the quote shall be carried out and the customer shall pay for the work in accordance with the within Terms and Conditions.

2.4 Printer may revise Estimate

The printer may amend any Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and the printer shall notify the customer of such amendment as soon as practicable thereafter. Upon the printer giving the customer notification of such amendment such amended estimate shall be and be deemed to be the Estimate for the purposes of these Terms and Conditions.

3. CHARGES

3.1 Invoice

Subject to clause 5.3, when the Order has been completed, the printer will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, for an amount representing the printer's charge for the work done in filling the Order, and for any of the other charges specified in clause 3.2.

3.2 Additional Charges

In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing the printer's charge for the work done, the printer may charge to the customer:

(a) fees for any preliminary work performed at the customer's request;

(b) fees for additional work required to be done as a result of the customer changing his, her or its instructions;

(c) fees for having to work from poor copy;

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

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

(f) fees and other charges for work required to be done urgently, including any overtime costs;

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

(h) fees for 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) freight costs and charges;

(j) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause;

3.3 For the purposes of these Terms and Conditions:

(a) the term "printer's charge" refers in each case to the standard or usual fee charged by the printer from time to time in respect of the Order;

(b) "preliminary work" means all and any work performed by the printer at the customer's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of the printer at the time when the printer supplied the Estimate;

(c) "additional work" includes all work undertaken by the printer as a consequence of the customer's variation, alteration or modification of its instructions in relation to the Order; and

(d) "freight costs and charge" includes all costs and expenses incurred by the printer in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise.

3.4 Under/Over supplies

(a) The customer acknowledges that whilst the printer 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").

(b) Where a discrepancy occurs the printer will adjust the amount charged to the customer for the Order a pro rata amount to reflect the actual number of items produced."

4. DELIVERY

4.1 Notification

The printer shall notify the customer when the Goods are ready for collection.

4.2 Collection

The customer must collect the goods from the printer's premises upon being notified by the printer that the Goods are ready for collection. If the printer agrees to deliver the Goods the customer shall bear all freight costs and charges of such delivery.

4.3 Rejection

(a) Subject to clause 7.1 the customer may only reject the Goods if they do not comply with the customer's instructions. If the customer wishes to reject the Goods, the customer must notify the printer of the rejection:

(i) if the printer agrees to deliver the Goods to the customer's premises – within 7 days of delivery (or such other time as is mutually agreed);

(ii) otherwise - within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

(b) In the event of a dispute arising as to whether or not the Goods comply with the customer's instructions the matter will be dealt with in accordance with the provisions of clause 8.9 of these Terms and Conditions.

4.4 Risk
The risk in the Goods passes to the customer:
(a) if the printer delivers the Goods to the customer's premises - at the time of delivery;
(b) otherwise - at the time the printer notifies the customer that the Goods are ready for collection. If the customer is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to the printer at the time the customer notifies the printer that the Goods are rejected.

5. PAYMENT
5.1 Time for payment
The customer must, within 30 days of the customer receiving the printer's invoice, pay to the printer the total amount set out in the invoice.
5.2 Interest
The printer may charge interest at the Interest Rate on amounts not paid within the time specified in clause 5.1.
5.3 Advance and progress payments
(a) The printer may issue an invoice for the amount of the Estimate before commencing the Order where the printer has not previously carried out work for the customer or where the printer considers it otherwise prudent to do so ;
(b) The printer may, in the event that the printer 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 a proportion of the amount of the Estimate (the proportion to be at the printer's discretion) and require that proportion of the Estimate to be paid in advance of any further work being done.
(c) 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 printer may issue an invoice for a particular sum (to be specified by the printer) for the work already done and for other costs incurred by the printer (such as storage costs).
5.4 Damages
The customer must pay to the printer any costs, expenses or losses incurred by the printer as a result of the customer's failure to pay to the printer all sums outstanding from the customer to the printer (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6. NON-PAYMENT
6.1 Retention of ownership
Until the customer has paid all sums outstanding in relation to the Goods:
(a) Title in the Goods shall not pass from the printer to the customer.
(b) If the Goods are in the customer's possession, the customer shall hold the Goods as trustee for the printer and must store the Goods so that they are clearly identifiable as the property of printer.
(c) The printer may call for and recover possession of the Goods (for which purposes the printer's employees or agents may enter the customer's premises and take possession of the Goods without liability to the customer) and the customer must deliver the Goods to the printer if so directed by the printer.
(d) The customer may, in the ordinary course of the customer's business, sell the Goods to a third party but:
(i) the proceeds of sale to the third party shall be held by the customer as trustee for the printer and the customer shall account to the printer for those sums; and
(ii) if the printer requires, the customer shall assign to the printer the customer's claim against the third party and shall execute all documents necessary to effect that assignment.
6.2 General lien
The printer shall, in respect of all sums owed by the customer to the printer hereunder, have a general lien on all property of the customer in the printer'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 the printer as aforesaid enjoys copyright protection in favour of the customer, the customer hereby grants to the printer a licence to exercise the rights conferred on the printer under this clause.

7. LIABILITY
7.1 Proofs
If the printer submits to the customer a proof of the Goods the printer 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.

7.2 Non-excludable Rights
The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").
7.3 Disclaimer of Liability
The printer disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the printer for a breach of a Non-excludable Right is limited, at the printer's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or any services supplied again.
7.4 Indirect losses
Notwithstanding any other provision of these Terms and Conditions, the printer is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the customer for:
(a) any increased costs or expenses;
(b) any loss of profit, revenue, business, contracts or anticipated savings;
(c) any loss or expense resulting from a claim by a third party; or
(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the printer's failure to complete or delay in completing the Order or to deliver the Goods.
7.5 Electronic data
Without limiting the generality of the foregoing clauses, the printer will not be liable to the customer for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the customer to the printer.
7.6 Customer's property
Subject to clause 7.5,The printer will not be liable for the damage, loss or destruction of any property of the customer in the printer's possession unless the loss or damage is due to the failure of the printer to exercise due care and skill in handling or storing the property.
7.7 Force Majeure
The printer will have no liability to the customer in relation to any loss, damage or expense caused by the printer's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the printer's normal suppliers to supply necessary materials or any other matter beyond the printer's control.

8. GENERAL MATTERS
8.1 Periodicals
If the contract between the printer 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 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 printer may terminate the contract at any time if the customer is in breach of any of provision of these Terms and Conditions relating to payment.
8.2 Alterations to style etc
If, before the Quote is prepared, the customer does not give the printer specific instructions in relation to style, type or layout:
(a) the printer may use any style, type and layout which, in the printer's opinion, is appropriate; and
(b) the printer may charge an additional amount for any 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 printer.
8.3 Overset
The customer must pay for overset matter (being matter produced on the customer's instructions but not used in a publication for which it was intended).
The customer may instruct the printer to retain overset matter for future issues of the publication or to discard the overset matter.
8.4 Outside work

If the printer has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by the printer from a third party in order to carry out the customer's instructions:
(a) The printer 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 printer 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. Any claim by 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 printer at the time of incorporation.

8.5 Material supplied by customer

If the printer 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 quantity to be specified by the printer.
(b) The printer 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 printer 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 printer at the time of incorporation.

8.6 Property left with printer

If the customer leaves property in the printer's possession without specific instructions as to what is to be done with it, the printer 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.

8.7 Responsibility to insure

The printer has no obligation to insure any property of the customer in the printer's possession. The customer must pay the cost of any insurance arranged by the printer at the request of the customer.

8.8 Ancillary materials

Unless the printer and customer agree otherwise, drawings, sketches, paintings, 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 printer 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 printer.

8.9 Copyright

(a) Copyright in all artistic and literary works authored by the printer shall be the property of the printer.
(b) The customer:
(i) warrants that the customer has copyright in or a licence to authorise the printer to reproduce, all artistic and literary works supplied by the customer to the printer for the purposes of the Order and the customer hereby expressly authorises the printer to reproduce all and any of such works for the purposes aforesaid;
(ii) hereby indemnifies and agrees to keep indemnified the printer against all liability, losses or expenses incurred by the printer 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; and
(c) The customer is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic works authored by the printer for the purposes of the Order however the exercise of such licence shall be conditional upon the printer having received all monies due to the printer under these Terms and Conditions.

8.10 Ideas

The customer must keep confidential and not use any ideas communicated by the printer to the customer without the printer's written consent.

8.11 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the customer) used by the printer to store data for the purposes of completing the Order are the property of the printer. The customer cannot require the printer to supply to the customer any data so stored. In the event that the printer does supply any data so stored or created the printer may charge for supplying such data to the customer.

8.12 Storage of electronic data

The printer will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If the printer agrees to store such data, the printer may charge for doing so.

8.13 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

8.14 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

8.15 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in the State or Territory in which the printer's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions. **Issued 2000**

9 GOODS AND SERVICES TAX

9.1 All amounts are GST exclusive amounts

All amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

9.2 All amounts to be increased for any GST

If any GST is payable by the printer in respect of the supply of any goods or services to the customer, then the amount expressed or described in these Terms and Conditions ('Original Amount') is to be increased so that the printer receives an amount ('Increased Amount') which, after subtracting the GST liability of the printer on that Increased Amount, results in the printer retaining the Original Amount after payment of that GST liability.

9.3 Out of pocket expenses are GST inclusive

All out of pocket expenses referred to in these Terms and Conditions are GST inclusive out of pocket expenses.

9.4 Printer to assist Customer

The printer will do all things reasonably available to it to assist the customer to claim on a timely basis any input tax credits (if any) the customer may be entitled to claim for any acquisition of goods and services from the printer. This includes the printer maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the customer.

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