

TERMS AND CONDITIONS OF TRADE

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 PPP to the Customer.

1.2 Interpretation

In these Terms and Conditions:

“**PPP**” Abbreviation for Printer - Percival Print & Packaging

“**Additional Work**” includes all work undertaken by PPP as a consequence of the Customer's variation, alteration or modification of its instructions in relation to the Order;

“**Business Day**” means a day on which banks are open for general banking business in the State or Territory in which PPP's premises are located; “**Estimate**” means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4); “**Freight Costs and Charge**” includes all costs and expenses incurred by PPP in removing the Goods from its premises, whether by way of actual or attempted delivery to the Customer or otherwise; “**Goods**” means all present and after acquired Goods produced by PPP under an order; “**GST**” means Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); “**Interest Rate**” means a rate 2% higher than the Cash Target Rate as fixed by the Reserve Bank of Australia; “**Order**” means the work required to be done in order to fulfill the Customer's instructions; “**Preliminary Work**” means any and all work performed by PPP 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 PPP at the time when PPP supplied estimate; “**Printer's Charge**” refers in each case to the standard or usual fee charged by PPP from time to time in respect of the Order; “**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

Percival Print & Packaging 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 PPP's charge for the performance of such work.

2.2 Acceptance by Customer

Where PPP has given the Customer a Quote:

- (a) PPP need not commence work until the Quote has been accepted by the Customer.
- (b) The Customer may accept the Quote by instruction in writing to PPP to commence work.
- (c) Acceptance by the Customer of the Quote, whether express or implied, will constitute acceptance by the Customer of these Terms and Conditions.

2.3 Quote evidence of instructions

If the Quote is accepted by the Customer, the subject of the Quote (the work) shall be carried out and the Customer shall pay for the work in accordance with the Quote and these Terms and Conditions.

2.4 Printer may revise Estimate

PPP may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and PPP shall notify the Customer of such amendment as soon as practicable thereafter. Upon PPP 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, PPP will issue an invoice to the Customer for the amount of the Estimate or, if no Estimate was made, for an amount representing PPP's 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 PPP's charge for the work done, PPP 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 PPP 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 for handling or storing material or equipment supplied by the Customer for the purposes of the Order;
- (g) Fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, artwork or any document including computer files supplied for the purposes of the Order by the Customer;
- (h) Freight costs and charges
- (i) Other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

4. DELIVERY

4.1 Notification

PPP shall notify the Customer when the Goods are ready for collection.

4.2 Collection

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

4.3 Rejection

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 PPP of the rejection:

- (a) If PPP agrees to deliver the Goods to the Customer's premises – within 7 days of delivery (or such other time as is mutually agreed);
- (b) Otherwise – within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

4.4 Risk

The risk in the Goods passes to the Customer;

- (a) If PPP delivers the Goods to the Customer's premises – at the time of delivery;
- (b) Otherwise – at the time PPP 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 PPP at the time the Customer notifies PPP that the Goods are rejected.

5. PAYMENT

5.1 Time for payment

The Customer must, within 30 days of end of month in which receipt of invoice has been dated, pay PPP the total amount set out in the invoice (or other time as is mutually agreed).

5.2 Method of payment

Payment for the Order is to be made by the Customer by cheque, EFT or any other form of payment as agreed by PPP and the Customer. Unless otherwise stated, all payment shall be in Australian Dollars.

5.3 Interest

PPP may charge interest at the current Interest Rate on amounts not paid within the time specified in clause 5.1.

5.4 Advance and progress payments

- (a) PPP may issue an invoice for the amount of the Estimate before commencing the Order where PPP has not previously carried out work for the Customer or where PPP considers it otherwise prudent to do so;
- (b) PPP may, in the event that PPP 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 PPP'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, PPP may issue an invoice for a particular sum (to be specified by PPP) for the work already done for other costs incurred by PPP (such as storage costs).

6. NON PAYMENT

6.1 Damages

The Customer must pay to PPP any costs, expenses or losses incurred by PPP as a result of the Customer's failure to pay to PPP all sums outstanding from the Customer to PPP (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6.2 Retention of title

- (a) The Customer has paid all amounts outstanding in relation to the Goods and any other Goods supplied by PPP to the Customer, title and property in the Goods shall not pass from PPP to the Customer;
- (b) If the Goods are in the Customer's possession, the Customer shall hold the Goods as trustee for PPP and must store Goods so that they are clearly identifiable as the property of PPP; PPP may call for and recover possession of the Goods (for which purposes PPP'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 PPP if so directed by PPP;
- (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 PPP and the Customer shall account the PPP for those sums; and
 - ii. If the PPP requires the Customer shall assign the PPP the Customer's claim against the third party and shall execute all documents necessary to affect that assignment.

6.3 General lien

PPP shall, in respect of all sums owed by the Customer to PPP hereunder, have a general lien on all property of the Customer in PPP'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 PPP as aforesaid enjoys copyright protection in favour of the Customer, the Customer hereby grants to PPP a licence to exercise the rights conferred on PPP under this clause.

7. LIABILITY

7.1 Proofs

If PPP submits to the Customer a proof of the Goods PPP 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

PPP disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, Customer 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 PPP for a breach of a Non-excludable Right is limited, at PPP's option, to the supplying of the Goods and/or any Services supplied again.

7.4 Indirect losses

Notwithstanding any other provision of these Terms and Conditions, PPP 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 PPP'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, PPP will not be liable to the Customer for loss, however caused, of any data stored on flash drives, CD's or other media supplied by the Customer to PPP.

7.6 Customer's property

Subject to clause 7.5, PPP will not be liable for the damage, loss or destruction of any property of the Customer in PPP's possession unless the loss or damage is due to the failure of PPP to exercise due care and skill in handling or storing the property.

7.7 Force Majeure

PPP will have no liability to the Customer in relation to any loss, damage or expense caused by PPP'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 PPP's normal suppliers to supply necessary materials or any other matter beyond PPP's control.

8. GENERAL MATTERS

8.1 Periodicals

If the contract between PPP 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 on 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), PPP may terminate the contract at any time if the Customer is in breach of any 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 PPP specific instructions in relation to style, type or layout;

- (a) PPP may use any style type and layout which, the PPP's opinion, is appropriate; and
- (b) PPP may charge an additional amount for any additional work required to be done (including any production of additional proofs) as a result of the Customer subsequently altering the style, type or layout used by PPP.

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 PPP to retain overset matter for future issues of the publication or to discard the overset matter.

8.4 Outside work

If PPP has to obtain Goods (including film, plates, dies/drawings or artwork) and/or Services not normally stocked or supplied by PPP from a third party in order to carry out the Customer's instructions:

- (a) PPP 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) PPP 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 PPP at the time of incorporation.

8.5 Material supplied by Customer

If PPP 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 PPP;
- (b) PPP will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking;
- (c) PPP 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 PPP at the time of incorporation.

8.6 Property left with printer

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

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

8.8 Ancillary materials

Unless PPP and Customer agree otherwise, drawings, sketches, paintings, photographs, film, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, flash drives or other media or data and other material produced by PPP 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 PPP.

8.9 Copyright

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

8.10 Ideas

The Customer must maintain confidentiality and not use/or share any ideas communicated by PPP without PPP's written consent.

8.11 Electronic media

All flash drives, CD's or other media (other than media supplied by the Customer) used by PPP to store data for the purposes of completing the order are the property of PPP. The Customer cannot require PPP to supply to the Customer any data so stored. In the event that PPP does supply any data so stored or created PPP may charge for supplying such data to the Customer.

8.12 Storage of electronic data

PPP will be responsible for storing any data of CD's, flash drives or other media when the Order has been completed. If PPP agrees to store such data, PPP 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 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 of Western Australia in which PPP's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

9. GOODS AND SERVICES TAX

9.1 All amounts are GST inclusive amounts

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST inclusive amounts.

9.2 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.

9.3 Printer to assist Customer

PPP will do all things reasonable available to it to assist the Customer to claim on a timely basis and input tax credits (if any) the Customer may be entitled to claim for any acquisition of Goods and Services from PPP. This includes PPP 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.

10. PERSONAL PROPERTY SECURITIES ACT

10.1 Security Interest

The Customer acknowledges and agrees that:

- (a) These Terms and Conditions give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2009; and
- (b) The security interest is taken in all Goods previously supplied by PPP to the Customer (if any) and all Goods that will be supplied in the future by PPP to the Customer during the continuance of the parties' relationship.

10.2 Undertaking

The Customer undertakes to:

- (a) Sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which PPP may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) Reimburse PPP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
- (c) Give PPP not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details.

10.3 Verification Statement

The Customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.