

# STANDARD TERMS AND CONDITIONS

## 1 APPLICATION OF TERMS AND CONDITIONS

- 1.1 Unless otherwise agreed in writing by us, these terms and conditions:
- apply to the provision of all goods and all related services (collectively **Goods**) to be provided by us to you; and
  - prevail over any terms and conditions you may nominate.

## 2 PROVISION AND ORDERING OF GOODS

- 2.1 We have no obligation to supply any Goods until your order has been accepted by us. We will notify you within a reasonable time whether your order has been accepted. Our acceptance of your order creates a contract between us (**Contract**) to supply Goods to you subject to these terms and conditions and, other than to the extent that we agree in writing to the contrary, on terms consistent with the unexpired quotation issued by us and which immediately preceded your order (**Quotation**).
- 2.2 If:
- the delivery date specified in the Quotation is within 3 months of the date of the Quotation, then the prices quoted (**Prices**) are fixed subject to us confirming we have capacity to complete the Goods by the nominated date, unless otherwise agreed by us in writing; and
  - the delivery date specified in the Quotation is greater than 3 months from the date of the Quotation or if no delivery date is specified in the Quotation then the Quotation is only an estimate of the Prices and the Prices will be confirmed by us at the time you notify the desired delivery date and we confirm we have the capacity to complete the Goods by that nominated date.
- 2.3 If after acceptance of your order, we are unable to obtain delivery of supplies of paper of the grade and quality specified in the Quotation to complete the order by the estimated delivery date, and if an acceptable substitute has not been agreed within 7 days of us notifying you of the delay, the order, and the Contract to which the order relates, shall be cancelled.

## 3 PRICES

- 3.1 The Prices can only be used to run on or run back different quantities of the Goods by the percentage set out in the Quotation.
- 3.2 Where, at your request, additional work is undertaken that is not specified in the Quotation or the work that is the subject of the Quotation is varied, we will charge you in addition to the Prices our standard or usual fee for undertaking such work. This may include additional fees or charges for deviations or revisions of Quotations, as specified in the Rate Card.
- 3.3 We reserve the right to pass on to you on any additional costs (including merchant fees) incurred by us where you pay us by credit card.
- 3.4 Where the Contract between us relates to the supply by us of Goods over a period that is greater than 6 months from the date of the Quotation, we may, at 6 monthly intervals from the date of the quotation, adjust the Prices to reflect any increased cost of paper arising from exchange rate fluctuations and increases in the mill prices at which we purchase paper.
- 3.5 Where the Contract between us relates to the supply by us of Goods over a period greater than 1 year from the date of the Quotation, we may at any time effective from each anniversary of the Quotation (**anniversary**) adjust the non-paper component of the Prices by a percentage equal to the average percentage increase (if any) in the labour rates payable by us under the terms of our collective employment agreements between the later of the date of the quotation or the last adjustment of the Prices pursuant to this paragraph, and the relevant anniversary.

## 4 TAXES

Unless expressly stated by us, the Prices quoted do not include:

- sales, goods and services, value added, carbon, emissions, environmental or any other applicable government tax or duty payable either before or after invoice from us. Such taxes and duties are payable in addition to the Prices; or
- any costs associated with the introduction of any carbon or emissions trading or similar scheme (**Trading Scheme**). Where, during the period that we provide Goods to you, any Trading Scheme is introduced, we reserve the right to adjust the Prices to reflect the increased costs of supplying Goods to you (including increased costs arising from or in connection with the purchase or trading of emissions, carbon or other like permits and any increased costs of our production inputs arising from the introduction of the Trading Scheme).

## 5 TITLE AND RISK

Property and risk in relation to Goods passes to you on the earlier of delivery or collection.

## 6 CLIENT SUPPLIED MATERIAL

- 6.1 Products and materials that you supply to us must comply with all of our applicable specifications and must be supplied by the time notified by us. You will supply to us sufficient quantities of such products or materials to enable us to produce the Goods allowing, where applicable, for a reasonable amount of wastage.
- 6.2 Without limiting clause 6.1, if we agree to use paper supplied by you, our handling, storage and use of that paper is subject to our Customer Supplied Paper Terms as

either provided to you in the Quotation or which is otherwise available at <http://www.pmplimited.com.au/terms-conditions>. All paper you supply us, and the manner of your supply, must comply with those Terms and any specifications in the Contract.

## 7 DELIVERY / PROVISION OF GOODS

- 7.1 Other than where we have agreed to deliver the Goods to you, you are responsible for removing the Goods and any returnable materials from our premises within 7 days after being notified they are ready for collection. After 7 days, you will be liable to pay our standard daily storage charge.
- 7.2 If we agree in writing to deliver the Goods, you must pay us for that delivery at our current rates.
- 7.3 Any dates quoted for supply or delivery of the Goods are approximate only and although we will use reasonable efforts to meet them, we will not be liable for any delay in such supply or delivery.

## 8 FAILURE TO PROVIDE EXACT QUANTITIES

The agreed quantity of Goods, includes a margin of 3 per cent for surpluses or deficiencies in the quantity of Goods we supply. Where such a surplus or deficiency occurs, the Prices will be adjusted pro rata to reflect the actual quantity of Goods supplied to you.

## 9 CLAIMS

You will be deemed to have accepted the Goods free of defect or other non conformity unless we receive a substantiated written claim within 14 days from the date that we notify you that the Goods are ready for collection or the date that we deliver or otherwise attempt to deliver the Goods to you, as the case may be.

## 10 PAYMENT

- 10.1 We may invoice you for Goods once produced.
- 10.2 You must pay each invoice within 30 days from the date of invoice.
- 10.3 If you dispute an invoice you must nonetheless pay the undisputed amount and we must both endeavour to resolve the disputed amount promptly and in doing so act in good faith.
- 10.4 If you fail to pay any undisputed portion of the invoice by the due date then, without affecting any other right or remedy available to us, we may:
- suspend any further deliveries to you of the Goods in question or any other Goods to you whether under an existing or new order;
  - charge you interest on the amount unpaid at the rate set from time to time under the Penalty Interest Rates Act 1983 (Vic) (such interest to be computed daily and compounded monthly) until payment in full is made;
  - exercise a general lien on all of your property in our possession to cover the amount unpaid for the Goods; and
  - recover from you, in addition to the outstanding amount, all reasonable costs incurred by us in collection of the outstanding amount.

## 11 EXCLUSIONS AND LIMITATIONS

- 11.1 We exclude all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this paragraph to be void (**Non-excludable guarantee**).
- 11.2 To the extent permitted by law:
- except for liability for breach of a Non-excludable guarantee, we exclude liability (whether in contract, tort (including negligence), pursuant to statute or otherwise) for loss of profits or consequential or indirect loss or damage; and
  - our liability to you for our breach of any Non-excludable guarantee, other statutory provision or any express guarantee, condition or warranty or our negligence is limited, at our option, to supplying the Goods in respect of which the breach or negligence occurred again or to paying the cost of having those Goods supplied again.
- 11.3 You acknowledge that the exclusions and limitations in this clause 11 are customary for suppliers of goods equivalent to the Goods, and are fair and reasonable given the nature of the Goods and the Price charged for them.

## 12 MATERIALS SUPPLIED TO US BY YOU

You must maintain a copy of all material supplied to us. We will not be responsible for accidental damage to materials supplied by you or for the accuracy of final output which depends on the input supplied by you.

## 13 PREPRESS PROOFS

- 13.1 On request we will submit prepress proofs along with original copy for your review and approval. You must return corrections on a 'final complete set' marked either 'OK' or 'OK with corrections' or 'Revised proof required' and signed by you. Until the final complete set is received, we are under no obligation to perform additional work.
- 13.2 We will not be responsible for production errors if:
- proofs are not required by you;
  - the work is printed per your OK; or

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- (c) requests for changes are communicated by you orally.
- 13.3 As we do not provide prepress proofs except on request, we reserve the right to charge you an additional amount at our current rates to cover this extra service.

### 14 PRESS CHECK

By arrangement, you may be present at the press during makeready to conduct a press check. You will be charged at our current rates for any press time lost because of any delay by you, or for any alterations/corrections made by you.

### 15 COLOUR PROOFING AND REGISTER

You acknowledge and agree that:

- (a) variation in colour between colour proofs and completed Goods is likely to occur due to the differences in equipment, paper, inks and other conditions between colour proofing and production pressroom operations;
- (b) minor loss of register may occur due to production press room operations; and
- (c) you will allow and accept any such variation which reasonably occurs.

### 16 MATERIALS AND ARTWORK

16.1 Property in all tangible items such as digital image files, plates, film and production material, but not artwork, produced by us remains at all times our property and we are under no obligation to retain such materials.

16.2 Property in tangible artwork produced by us for you in the production of Goods is yours, and you must collect it within 3 months (in the case of magazines) or 2 weeks (in all other cases) after the Goods are completed. If you fail to do so, we may dispose of it free from any action or claim.

### 17 CUSTOMER SPECIFIED STOCK

17.1 Any stock specified by you that is not in accordance with our standard stocks (as defined by us from time to time) (**Customer Specified Stock**) must be approved by us before use. Our approval of Customer Specified Stock may be subject to a satisfactory trial or satisfactory past performance of the stock.

17.2 Where we use Customer Specified Stock and encounter unacceptable performance (in our reasonable opinion), we may reject the stock and you will be responsible for the costs associated with the handling and disposal of any rejected stock or, otherwise, we may charge you for all extra costs reasonably incurred by us in using the stock.

17.3 You will be charged for any remaining Customer Specified Stocks at the end of printing of your order. We may assist in disposing of any remaining Customer Specified Stocks by holding the stock pending sale or use by another customer or transporting the stock to another site or slitting the stock for alternative use.

17.4 Where we order Customer Specified Stock, you will be liable for ensuring the stock is used or otherwise paid for. Once we place an order with the mill, changes to the specifications of the stock or cancellation of the order is at our discretion.

### 18 ACKNOWLEDGEMENT

You acknowledge and agree that:

- (a) you are solely responsible for the content and accuracy of supplied input and other material provided to us;
- (b) we will not be responsible for checking, for errors or otherwise, such input or other materials; and
- (c) we will be under no liability in respect of any errors or defect in the Goods arising from any materials or specifications provided to us by you.

### 19 PERIODICALS

19.1 If the contract between us relates to more than one issue of the Goods (**Periodicals**) and the Quotation does not provide a set term for the supply by us of the Goods, then the provisions of this clause 19 apply and in addition to clause 21 either party may terminate the Contract:

- (a) in the case of Periodicals published weekly or more frequently, by giving 4 weeks prior written notice; and
- (b) in the case of Periodicals published less frequently than weekly, by giving at least 13 weeks prior written notice.

19.2 Until our engagement to supply the Periodicals is terminated in accordance with clause 19.1 or 21, our engagement is a continuing one.

19.3 Until notice of termination is given, we will maintain sufficient paper to cover our reasonable estimate of your requirements for succeeding 3 months periods. Where you terminate the Contract in accordance with clause 19.1, you will purchase the unused paper purchased by us in accordance with this clause 19.3.

### 20 WARRANTIES

You warrant that:

- (a) any material to be printed, produced or distributed by us will not:
  - (i) contain anything illegal, obscene, defamatory or offensive; or
  - (ii) infringe the copyright or other right of any person; and

- (b) the printing, production or distribution of the material will not give rise to any claims against or liabilities to us or our officers, employees or agents.

### 21 TERMINATION

21.1 A party may, without affecting any other rights it may have, terminate or suspend any Contract with immediate effect by giving notice to the other if the other party has:

- (a) breached any provision of that Contract and has failed to remedy the breach within 7 days after receiving notice requiring it to do so;
- (b) breached a material provision of that Contract where that breach is not capable of remedy;
- (c) ceased to be able to pay its debts as they become due;
- (d) become subject to any form of insolvency administration; or
- (e) had any step taken by a mortgagee to take possession or dispose of the whole or any part of that party's assets.

21.2 If we exercise our rights pursuant to clause 21.1 above to terminate or suspend a Contract, we will immediately be entitled to invoice you for work in progress under that Contract at our current rates. This paragraph does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.

### 22 FORCE MAJEURE

We will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond our reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of our suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery or import or export regulations or embargoes.

### 23 CONFIDENTIALITY

Each party (**Receiving Party**) agrees not to disclose any information provided to it by the other party that may reasonably be regarded as confidential or commercially sensitive (including without limitation pricing information of the other party) unless the Receiving Party can establish the information was:

- (a) at the time of disclosure, in the public domain;
- (b) subsequent to disclosure, entered the public domain other than through the breach of any duty owed to the other party; or
- (c) required to be disclosed by law.

### 24 GENERAL

24.1 We may subcontract the supply or delivery of all or any part of the Goods.

24.2 Any failure by us to insist on strict compliance with any Contract between us or any delay by us in exercising our rights under any Contract between us will not constitute a variation or waiver of any provision of that Contract or of any right available to us.

24.3 We may correct any errors or omissions in any offer, quotation, order confirmation, invoice or other documentation issued by us.

24.4 If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force.

24.5 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.

24.6 You acknowledge that third parties may be involved in our provision of the Goods to you. These third parties may be your or our agent or other intermediary, be suppliers to us or customers of ours in connection with the supply of the Goods to you or be otherwise involved, directly or indirectly, in the supply of the Goods to you. You acknowledge that we may pay, give to, or receive from such third parties commissions, fees, rebates or other remuneration or benefits (**Rewards**) for our involvement with the third party in connection with the supply of the Goods to you.

24.7 Where we supply the Goods to you and those Goods are for the benefit of another person (**End Customer**), you agree to make all necessary disclosures to the End Customer in relation to any Rewards exchanged between us so as to comply with all applicable laws. To the extent that you act or purport to act on behalf of an End Customer in any way, you warrant that you hold all necessary authority from that End Customer to do so.

24.8 All Contracts between us and you will be governed by the law applicable in the place where the Goods are to be produced.