

# Terms and Conditions of trade

Worldwide Online Printing Pty Ltd (Worldwide)

## 1. Introduction

### 1.1 Application of these Terms and Conditions

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

### 1.2 Interpretation

In these Terms and Conditions:

**"Additional Work"** includes all work undertaken by Worldwide 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 Worldwide'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 Worldwide 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 Worldwide 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 fulfil the customer's instructions;

**"Preliminary Work"** means any and all work performed by Worldwide 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 Worldwide at the time when Worldwide supplied the Estimate;

**"Worldwide's Charge"** refers in each case to the standard or usual fee charged by Worldwide 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

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

- (a) the work required to be done in order to fulfil the customer's instructions; and
- (b) an estimate of Worldwide's Charge for the performance of such work.

### 2.2 Acceptance by customer

Where Worldwide has given the customer a Quote:

- (a) Worldwide 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) Worldwide 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

Worldwide 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 Worldwide shall notify the customer of such amendment as soon as practicable thereafter. Upon Worldwide 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, Worldwide will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, for an amount representing Worldwide's Charge for the work done in fulfilling 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 Worldwide's Charge for the work done, Worldwide 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 Worldwide 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 Under/Over supplies

- (a) The customer acknowledges that whilst Worldwide 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 Worldwide will adjust the amount charged to the customer for the Order on a pro rata basis to reflect the actual number of items produced.

## 4. Delivery

### 4.1 Notification

Worldwide shall notify the customer when the Goods are ready for collection.

### 4.2 Collection

The customer must collect the Goods from Worldwide's premises upon being notified by Worldwide that the Goods are ready for collection. If Worldwide 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 Worldwide in writing of the rejection:

- (a) if Worldwide 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 Worldwide delivers the Goods to the customer's premises - at the time of delivery;
- (b) otherwise - at the time Worldwide 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 Worldwide at the time the customer notifies Worldwide that the Goods are rejected.

## **5. Payment**

### **5.1 Time for payment**

The customer must, within 14 days of the customer receiving Worldwide's invoice, pay to Worldwide the total amount set out in the invoice.

### **5.2 Method of payment**

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

### **5.3 Interest**

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

### **5.4 Advance and progress payments**

- (a) Worldwide may issue an invoice for the amount of the Estimate before commencing the Order where Worldwide has not previously carried out work for the customer or where Worldwide in its sole discretion, considers it otherwise reasonable to do so;
- (b) Worldwide may, in the event that Worldwide considers that completion of 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 determined by Worldwide in its sole discretion acting reasonably) and require that proportion of the Estimate to be paid in advance of and prior to 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 a matter for which the customer is responsible, Worldwide may issue an invoice for an amount (to be determined by Worldwide in its sole discretion acting reasonably) for the work already done and for other costs incurred by Worldwide (such as storage costs).

## **6. Non-payment**

### **6.1 Damages**

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

### **6.3 General lien**

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

## **7. Liability**

### **7.1 Proofs**

If Worldwide submits to the customer a proof of the Goods Worldwide 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**

Worldwide 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 Worldwide for a breach of a Non-excludable Right is limited, at Worldwide'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, Worldwide 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 Worldwide'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, Worldwide 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 Worldwide.

### **7.6 Customer's property**

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

### **7.7 Force Majeure**

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

## **8. General matters**

### **8.1 Periodicals**

If the contract between Worldwide 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 in writing 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 in writing 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 in writing of that party's intention to terminate the contract.
- (c) Notwithstanding sub-clause (b), Worldwide 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 Worldwide specific instructions in relation to style, type or layout:

- (a) Worldwide may use any style, type and layout which, in Worldwide's opinion, is appropriate; and
- (b) Worldwide 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 Worldwide.

### **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 Worldwide to retain overset matter for future issues of the publication or to discard the overset matter.

### **8.4 Outside work**

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

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

### **8.5 Material supplied by customer**

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

### **8.6 Property left with printer**

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

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

### **8.8 Ancillary materials**

Unless Worldwide and the 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 Worldwide 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 Worldwide.

### **8.9 Copyright**

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

### **8.10 Ideas**

The customer must keep confidential and not use any ideas communicated by Worldwide to the customer without Worldwide'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 Worldwide to store data for the purposes of completing the Order are the property of Worldwide. The customer cannot require Worldwide to supply to the customer any data so stored. In the event that Worldwide does supply any data so stored or created Worldwide may charge for supplying such data to the customer.

### **8.12 Storage of electronic data**

Worldwide will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Worldwide agrees to store such data, Worldwide 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 and 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, then it shall be so severed.

#### **8.15 Governing law and jurisdiction**

These Terms and Conditions are governed by the law in force in the State or Territory in which Worldwide'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.

### **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**

Worldwide 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 Worldwide. This includes Worldwide 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 Worldwide to the customer (if any) and all Goods that will be supplied in the future by Worldwide 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 Worldwide may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) reimburse Worldwide for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
- (c) give Worldwide 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.