

# Graphics One TERMS & CONDITIONS OF TRADING

## 1. INTRODUCTION

1.1 Application of these Terms and Conditions

For the purposes of this agreement, "Supplier" is MICHAEL REMMER A.B.N 28 795 924 862 trading as GRAPHICS ONE and the Client is the applicant named on the Application for a Credit Account or Work Authorisation provided by the Supplier to the Client. In this Agreement "Goods" means graphic design and associated products and services; "Order" means the work required to complete the Client's instructions and "Quote" means Estimate/Quote.

## 2. QUOTES

2.1 Supplier Supply Quote

The Supplier may give the Client a Quote specifying:

- (a) the details of the Order; and
- (b) an estimate of the Supplier's charge for the performance of the Order.

2.2 Acceptance by the Client

(a) The Client shall accept the Quote/Work Authorisation by instructing (in writing) the Supplier to commence the Order by signing and returning a true copy of the Quote/Work Authorisation accompanied with a purchase order number if applicable and the deposit (as specified in clause 8.1) if requested;

(b) Quotes are valid for thirty (30) days only, unless an extension has been authorised by the Supplier.

(c) Where a Quote has not been given to the Client, a Work Authorisation shall take its place.

(d) Acceptance by the Client of the Quote or Work Authorisation will constitute acceptance by the Client of these terms and conditions.

2.3 Preliminary work

All work carried out, whether experimentally or otherwise, at a customer's request, will be charged to the customer

2.4 Cancellation

The Client shall indemnify the Supplier from any costs, losses or expenses incurred should the Client cancel an accepted Quote or Work Authorisation.

In acceptance of the Quote or Work Authorisation, the Client warrants that it has not relied on any representation by the Supplier and its employees and agents other than as supplied in writing in the Quote or Work Authorisation.

## 3. PROOFS

3.1 The Client must promptly check artwork proofs provided by the Supplier and sign off. If a mistake is subsequently discovered, the Client must immediately notify the Supplier.

3.2 The Client may be charged by the Supplier for alterations required by the Client after the signing off of the proofs.

3.3 The Supplier shall incur no liability for any errors not corrected by the Client in proofs so submitted.

3.4 When sign off has not been obtained from the Client and the Supplier has been instructed by the Client to proceed the Client shall indemnify the Supplier from any errors or omissions resulting from those verbal instructions.

3.5 When style, type or layout is left to The Suppliers judgement, changes therefrom made by the Client shall be charged as an extra.

## 4. VARIATIONS

Any variations to the original Quote/Work Authorisation, unless agreed in writing by the Supplier, will attract additional costs.

## 5. DELIVERY

5.1 Delivery of the Goods shall be made to the Client's nominated address. Freight costs will be an additional charge unless otherwise agreed by the Supplier.

5.2 The risk in the Goods shall pass to the Client upon delivery of the Goods to the Client or its agent or to a third party nominated by the Client.

## 6. COLLECTION BY CLIENT

When a Client agrees to collect the Goods from the Supplier:

(a) the Client must do so within seven (7) days from advice that the Goods are ready for collection;

(b) the Client shall indemnify the Supplier from storage charges incurred should the Client fail to uplift the goods within the time specified in clause 6(a) and;

(c) such charges will be calculated at two per centum (2%) per month, on the value of the Order.

## 7. ERRORS/RETURN OF GOODS

The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier of any alleged shortage in quantity,

damage or failure to comply with the description. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any damage.

## 8. PAYMENT

8.1 First Transaction

In the case of the first transaction between the parties, the value of the order shall be paid on acceptance of the quotation or the lodging of the order (whichever shall be the latter) unless otherwise stated in writing by the supplier

8.2 Deposit

The Supplier may require a 50% deposit from the Client on acceptance of the Quote or Work Authorisation. The Client acknowledges the Supplier is under no obligation to start the Order until the deposit (if requested) is received by the Supplier in full and when all details pertaining to the Order are finalised. In the event of default as to payment owing to the Supplier on the part of the Client, the Supplier shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any other remedy available to the Supplier at law or in equity.

8.3 Balance of Payment

The Client must, within the time specified on the Supplier's invoice, pay the Supplier the balance owing on the invoice.

8.4 Progress Payment

After work has been in hand for one month, the supplier shall be entitled to a progress payment amounting to 75% (or such other amount as the supplier may stipulate from time to time) of the value of the work done.

8.5 Work Suspension

The suspension by the customer of any work, for any reason, for a period exceeding thirty (30) days, shall entitle The Supplier to payment for work already carried out, materials specially ordered for that work and other additional costs, including storage.

8.6 Interest

The Supplier may charge interest at fifteen per centum (15%) per annum calculated on a daily basis on amounts not paid within the time specified on the Supplier's invoice.

8.7 Damages

The Client must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Client's failure to pay to the Supplier all sums outstanding as owed by the Client to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## 9. PERIODICAL PUBLICATIONS

A contract for the preparation, production or processing of matter (including all processes ancillary thereto) for a periodical publication may not be terminated by either party unless four (4) weeks written notice is given in the case of periodicals produced weekly or more frequently, eight (8) weeks notice in writing in the case of periodicals produced less often than weekly, but not less than fortnightly, and thirteen (13) weeks notice in writing, in the case of periodicals produced less often than fortnightly. Nevertheless, The Supplier may terminate any such contract forthwith should any sum due thereunder remain unpaid.

## 10. RETENTION OF TITLE

10.1 Title

Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Supplier until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Client, the Client will be taken to hold the proceeds of sale of such Goods upon trust for the Supplier and to account to the Supplier for these proceeds. Any payment made by or on behalf of the Client which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Goods nor the Client's indebtedness to the Supplier and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

10.2 Bailment

The Client acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 10.1 and until that time:

(a) The Client is not entitled to sell the Goods but only in the ordinary course of business.

(b) The Client must not encumber or otherwise charge the Goods.

# Graphics One TERMS & CONDITIONS OF TRADING

Page 2 of 2

(c) The Client shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods to the Client.

## 10.3 Repossession

The Client hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Client and sell or dispose of them, and the Supplier shall not be liable to the Client or any person claiming through the Client and the Supplier shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to the Supplier.

If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the

Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Client.

## 11. RISK

The risk in the Goods shall pass to the Client upon delivery of the Goods to the Client or its agent or to a third party nominated by the Client.

## 12. INTELLECTUAL PROPERTY AND OWNERSHIP OF CREATIVE MATERIALS

### 12.1 Ancillary Materials

Unless the Supplier and Client agree otherwise in writing, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, disks, tapes, compact disks or any other media and other material produced by the Supplier in the course of or in the preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of the Supplier.

### 12.2 Copyright

The copyright in all artistic and literary works authored by the Supplier shall be the property of the Supplier. The Client:

(a) warrants that the Client has copyright or a licence to authorise the Supplier to reproduce all artistic or literary works supplied by the Client to the Supplier for the purposes of the Order and the Client hereby expressly authorises the Supplier to reproduce all and any of such works for those purposes; and

(b) must indemnify 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; and

(c) 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, provided that the exercise of such a licence is conditional upon the Supplier having received all monies due to the Supplier under these terms and conditions.

### 12.3 Intellectual Property Rights

The Client warrants that the use by the Supplier of any artwork or instructions supplied by the Client will not infringe any intellectual property of any other person and the Client indemnifies the Supplier against any claim relating to or arising from the infringement of any intellectual property of any other person.

### 12.4 Illegal Matter

The Supplier is not obliged to produce any illegal or libelous matter and the Client agrees to indemnify the Supplier against any claim relating to or arising from the production of such matter.

### 12.5 Ideas

The Client must keep strictly confidential and not use any art work or ideas communicated by the Supplier to the Client without the Supplier's prior consent in writing. The Supplier shall be entitled to compensation from the Client for any unauthorized use of any artwork or ideas.

12.6 The Client shall have no right or title to data stored by The Supplier on disks or any other electronic form of storage. Disks and other digital data supplied by The Client and/or other authorized persons remain the property of the Client. Unless otherwise indicated in writing, The Supplier shall assume these disks and other digital data to be duplicate copies of the original.

## 13. WARRANTY AND LIABILITY

13.1 The Supplier reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

13.2 In respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.

13.3 The Supplier gives those warranties implied by consumer protection legislation in relation to the Goods. All other warranties are excluded to the extent permitted by law.

### 13.4 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 Client in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### 13.5 Indirect Losses

Notwithstanding any other provision of these terms and conditions, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client 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 Supplier's failure to complete or delay in completing the Order or to deliver the Goods.

### 13.6 Disclaimer of Liability

The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, 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 Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

### 13.7 Force Majeure

The Supplier will have no liability to the Client in relation to any loss, damage or expense caused by the Supplier'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 Supplier's normal suppliers to supply necessary material or any other matter beyond the Supplier's control.

### 13.8 Client's Property

Any property of the Client held by the Supplier is at the Client's own risk.

## 14. SECURITY AND CHARGE

The Client hereby charges all property, both equitable and legal, present or future of the Client in respect of any monies that may be owing by the Client to the Supplier under the terms and conditions or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time or to register this charge over assets of the Client with the Australian Securities and Investments Commission.

## 15 GENERAL MATTERS

### 15.1 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.

### 15.2 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.

### 15.3 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Client and the Supplier will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.