

# TERMS AND CONDITIONS OF SALE

All dealings between Xenography Media Group Pty Ltd (“XMG”) ABN 74 112 862 236 and any Customer relating to any products, services or transactions are subject to the following Terms & Conditions of Sale unless otherwise agreed in writing.

## 1. Interpretation

In these terms and conditions:

“person” shall include a firm or corporation;

“Company” shall, where the context admits or requires, mean and include Xenography Media Group Pty Ltd (XMG) and/or any of its/their related bodies corporate as defined in Section 50 of the Corporations Law or any other person who or which is named as the party accepting the order; goods shall include services;

“Customer” shall mean the person to whom any quotation is made and shall include any person contracting or offering to contract with the Company on these terms and conditions and where there is more than one Customer, the Customer’s covenants and obligations are joint and several. Any term or condition which infringes any legislation whether State or Federal shall be severable from this contract any agreement between the parties for the supply of goods or services.

## 2. Deposits

The Customer agrees to pay the Company any deposit required by Company as a condition of acceptance by Company of any Order. A deposit remains the property of the Company unless the following occurs:

- distribution of the goods purchased are not completed and/or distributed
- a cancellation as indicated in Clause 23
- any other breach by the Customer of these terms and conditions within.

The deposit will be returned to the Customer within seven (7) days upon request in writing, if there has been no costs incurred to the Company for the goods purchased or ordered by the Customer.

## 3. Payments

Credit Purchases will be paid for by cash, cheque, bank cheque or Direct debit without deduction. The Company reserves the right to change interest at the rate of fifteen per cent (15%) per annum calculated daily on any overdue amounts.

## 4. Quotations

Any quotations are subject to withdrawal or variation by the Company at any time prior to acceptance of an order. The Company also reserves the right to amend prices at any time for the undistributed portion of any order, but the Customer will have the right to cancel the outstanding order within seven (7) days from the date of notification of an amendment to the price.

## 5. Offer and Acceptance

Any quotation made by the Company is not an offer to sell and no order given in pursuance of any quotation will bind the Company unless and until such until accepted by it order is accepted by the company in absolute discretion. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within fourteen (14) days of receipt by the Company or the Customer’s order. Upon acceptance of any order by the Company a binding agreement shall arise between the Customer and the Company and these terms and conditions shall be deemed to be incorporated in any such agreement between the Company and the Customer. If any terms and conditions are contained in any order, offer, acceptance or invoice of the Customer then it is specifically agreed between the Customer and the Company that such terms and conditions are null and void and shall not apply. And all representations, statements, terms and conditions, and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

## 6. Price

Unless otherwise expressly agreed in writing the price of the goods shall be that price charged by the Company at the date of the distribution plus:

- the amount which the Company is required to pay on account of any excise or sales tax or any other taxes or charges which may be established or levied by any government authority (domestic or foreign) upon the goods or the manufacture, use, sale or distribution thereof; and
- any added costs requested in writing by the Customer.

## 7. Costs

The Customer will pay any costs and expenses incurred by the Company or its solicitors, legal advisers, mercantile agents and others acting on the Company’s behalf in respect of anything arising from these terms and conditions or any dealing with the Company.

## 8. Cost Variation

Quotations are based on the current cost of production prevailing at the date of the quotation (materials, overheads, wages, etc.) and are subject to amendment on or after acceptance of any order placed in reliance upon such quotations, to meet any recognised rise or fall in such cost.

## 9. Distribution

- Any date quoted for distribution is an estimate only. Every endeavour will be made to distribute within the specified dates but, the Company shall not be liable and there will be no adjustment in the price if the date variation does not exceed seven (7) days and unless a guarantee shall have been given by the Company in writing providing for liquidated damages for failure to distribute by the quoted dates the Company shall not be liable to the Customer for any loss or damage whether direct, indirect, or consequential and how so ever arising for failure to distribute on or before the quoted dates.
- The Company reserves the right to distribute in entirety or by instalments (as the case may be). If distribution is made by instalments the Customer shall not be entitled
  - to terminate the contract any instalments still to be distributed; or
  - to any loss or damage howsoever arising for failure by the Company to distribute any instalment within the quoted dates.

## 10. Quantity Distributed

Every endeavour will be made to distribute the correct quantity ordered but, owing to the difficulties of producing exact quantities, the Company shall not be liable and there will be no adjustment in the price if the quantity variation does not exceed three per cent (3%) on orders of 100,000 or more, exceed five per cent (5%) on quantities between 50,000-99,999, seven per cent (7%) on quantities between 25,000-49,999 and ten per cent (10%) on quantities under 25,000. Any variation in quantities exceeding these amounts can be accepted by the Customer and charged for if agreed in writing or deducted pro rata (as the case may be).

## 11. Correction and Approval

Where the Customer approves any artwork or proofs submitted to the Company, the Company will not be liable for any errors or inaccuracies subsequently discovered in the goods or any work performed or produced by the Company in the course producing of the goods.

## 12. Description and Specifications

- Whilst every effort is made to ensure their accuracy the description, illustrations and material contained in every catalogue, price list, brochure, leaflet, specification sheets or other descriptive matter provided by or on behalf of the Company represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty. The Company reserves the right to modify the design of the goods without notice.
- The Company reserves the right to make any changes to designs, drawings, or specifications supplied to the Company by the Customer which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality of the goods.
- The Company does not warrant or guarantee that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon any designs, drawings or specifications supplied to the Company by or on behalf of the Customer will achieve any standard or performance or any capacity whatsoever.
- The Company will not be liable for any defect in the goods arising from any designs, drawings or specifications supplied to the Company by the Customer.
- In addition to any right of lien which the Company may be entitled to by law, the Company will have a general lien over any designs, drawings or specifications supplied to the Company by or on behalf of the Customer which is in the Company’s possession until all monies owing by the Customer to the Company on any account have been paid in full.

## 13. Intellectual Property

- All right, title and interest in and to any goods or services in which copyright or other intellectual property rights exist created by the Company for or supplied by the Company to the Customer shall, vest absolutely in and remain the sole property of the Company.
- The Customer acknowledges that all technical information, advice, know how, drawings, designs and samples (“the information”) submitted to the Customer by the Company are the confidential and proprietary information of the Company.
- The Customer undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any such intellectual property rights without the prior written consent of the Company.

## 14. Patents, Designs and Trademarks

The Customer warrants and assures that no patent, copyright, trademark, design or any other right, or any legislation, is or will be infringed by reason of the Company accepting or carrying out the order and the Customer agrees to indemnify the Company against all losses, costs and expense of whatever nature suffered or incurred by the Company in connection with any claim, action or proceeding by a third party and that the product is commissioned on the Customers instructions and at the Customers request.

## 15. Dies, Designs, Artwork, Etc

All dies, designs, artwork, sketches, negatives, photographs, plates, standing matter, blocks, engravings, pricing, campaign schedules, statistics, samples and general know-how are submitted to the Customer in confidence and shall remain the property of the Company notwithstanding that a charge is made for their use, maintenance and storage.

## 16. Access

In respect of any work done other than at the Company’s premises it shall be the duty of the Customer to ensure that the conditions under which the work is to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked on or handled and other material circumstances shall be suitable to the Company failing which the Company shall be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

## 17. Limitation of Liability

- Except when the Customer is a consumer for the purposes of the Trade Practices Act 1974 and the conditions warranties and rights implied by that Statute cannot be excluded, representations promises statements warranties and conditions (whether statutory express or implied) regarding any goods or services supplied by or on behalf of the Company which without limiting the generality of the foregoing shall include conditions or warranties as to quality or fitness for any particular purposes are expressly excluded. The Company shall not be liable for any loss or damage whatsoever and howsoever arising whether direct, indirect, special or consequential or in respect of any claim whenever and however made for any loss, damage, deterioration, deficiency or other fault or harm in the goods manufactured, distributed, work executed or services provided by or on behalf of or in any arrangements with the Company or occasioned to the Customer or any third or other party or to his or their property or interest and whether or not due to the negligence of the Company its servants or agents except in the following circumstances and subject to the following limitations:
  - the Customer shall inspect the goods immediately and shall, within seven (7) days from the commencement of distribution, give written notice to the Company of any matter or thing by reason whereof the Customer may allege that the goods are not in accordance with the contract agreement for supply of goods by the Company to the Customer.
  - the Company’s liability shall be limited in all circumstances to the repair or replacement (at the option of the Company) of any goods distributed which are with the prior written authority of the Company, returned adequately packed and freight paid to the Company within the Company’s guarantee period covering the goods as indicated in Clause 14(a) above and which the Company accepts as having been defective in materials or workmanship.
- The Company shall not be liable in any circumstance for any:
  - defects or damage caused in whole or in part by misuse, abuse, neglect, error, electrical or other overload, unsuitable applications, improper assembly, repair, alteration or accident;
  - transport, installation, removal, labour or other costs;
  - modifications or changes to the goods not authorised in writing by the Company or any other unauthorised act by the Customer or a third party;
  - goods distributed by the Company but the Company will endeavour to pass on to the Customer the benefit of any claim made by the Company and accepted by the manufacturer of such goods under warranty given by that manufacturer;
  - technical advice or assistance given or tendered by it to the Customer whether or not in connection with the distribution, manufacture, construction or supply of goods for or to the Customer.
- The Customer acknowledges that neither the Company or any person acting on the Company’s behalf has made any promise or undertaking in relation to the usage of the goods.

## 18. Insolvency and Default

If:

- the Customer makes default in any payment due to the Company or in the performance and observance of any term or condition set out herein;
  - a resolution is passed or proposed or a petition is presented or an application filed or an order made for the winding up or liquidation of the Customer;
  - a receiver, receiver and manager or controller (as defined in the Corporation Law) is appointed of the property or any part of the property of the Customer;
  - the Customer makes or proposes to make any arrangement with creditors;
  - the Customer is placed under administration or an administrator is appointed;
  - execution is levied upon the assets of the Customer for an amount in excess of \$1,000 and is not satisfied within seven (7) days;
  - the Customer is the subject of a debtor’s or creditor’s petition in bankruptcy or is the subject of a Bankruptcy Notice; or
- then, the Company may, without prejudice to any other remedy that may be available to the Company, at its option withhold further deliveries or cancel the contract any agreements between the Company and the Customer. This Clause does not limit any other remedy that may be available to the Company.

## 19. Title

Title to the goods shall not pass to the Customer or the Customer’s agent until payment in full in cleared funds of the purchase price for the goods has been received by the Company and for all other goods sold by the Company for which payment is then due.

## 20. Force Majeure

The Company will not be in default or breach of any contract with the Customer, or any of these terms and conditions, owing to an act of god, war strikes, lock-outs, fire, flood, drought or any other cause beyond the Company’s control or owing to the Company’s inability to procure materials or articles except at increased prices due to any of the foregoing causes.

## 21. Goods and Services Tax (GST)

Unless otherwise stated the price does not include GST and the Company reserves the right to increase the price by an amount equal to the GST payable in respect of any goods or supplies.

## 22. Waiver

If the Company elects not to exercise any rights arising from any breach of these terms and conditions it shall not be a waiver of any rights relating to any subsequent or other breach.

## 23. Cancellation

Any order may only be cancelled by mutual agreement and in the event of the cancellation of an order the Customer undertakes to reimburse and indemnify the Company for any costs or charges incurred by the Company in preparation for and the execution of an order which, without limiting the generality of the foregoing shall include an amount equal to fifty per cent (50%) of the net profit of the order had the order not been cancelled.

## 24. Disclosure

The applicant being an individual(s) agree(s) that the company may use and seek:

- From credit reporting agencies, the type of information listed and for the purpose stated below.
  - a consumer credit report in order to assess this application for commercial credit.
  - a consumer credit report for the purpose of assisting in the collection of overdue payments in respect of commercial credit provided by the company.
- From a credit provider (named in this application or in a credit report), personal information including the credit worthiness, credit standing, credit history or credit capacity of the applicant(s) as permitted under the Privacy Act for the following purpose.
  - to assess this application for credit
  - to notify other credit providers of a default by the applicant
  - to exchange information with other credit providers as to the status of the credit provided to this application where the applicant(s) is/are in default with other credit providers: and
  - to assess the credit worthiness of the applicant(s)

The applicant(s) being an individual(s) agree(s) that the company may disclose personal information concerning the applicant(s) to another credit provider for any purpose listed in paragraphs (b)(i) to (iv) above.