

Masterprint Pty Limited Terms and Conditions of Trading

1. INTRODUCTION

1.1 Application of these Terms and Conditions

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

1.2 Interpretation

In these Terms and Conditions:

"Business Day" means a day on which banks are open for general banking business in the State or Territory in which the Masterprint Pty Limited's premises are located; "Estimate" means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4); "Goods" means the final goods produced by Masterprint Pty Ltd by completing the order; "GST" means A New Tax System (Goods and Services Tax) Act, 1999; "Interest Rate" means the aggregate of two percentum (2%) and the rate of interest expressed as a percentage per annum charged by the Commonwealth Bank of Australia from time to time on Overdraft Accounts exceeding One Hundred Thousand Dollars; "Order" means the work required to be done in order to fulfill the customer's instructions; "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 Masterprint Pty Limited to supply quote

Masterprint Pty Limited 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 the Masterprint Pty Limited's charge for the performance of such work.

2.2 Acceptance by customer

Where Masterprint Pty Limited has given the customer a Quote:

(a) Masterprint Pty Limited 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) Masterprint Pty Limited to commence work.
(c) Acceptance by the customer of the Quote will constitute acceptance by the customer of these Terms and Conditions.

2.3 Quote evidence of instructions

If a written Quote is accepted by the customer, the work the subject of the quote shall be carried out and the customer shall pay for the work in accordance with the within Terms and Conditions.

2.4 Masterprint Pty Limited may revise Estimate

Masterprint Pty Limited may amend any estimate before the order has been completed to take into account any rise or fall in the cost of performing the order and Masterprint Pty Limited shall notify the customer of such amendment as soon as practicable thereafter. Upon Masterprint Pty Limited 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, Masterprint Pty Limited will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, for an amount representing Masterprint Pty Limited's charge for the work done in filling 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 Masterprint Pty Limited's charge for the work done, Masterprint Pty Limited 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 Masterprint Pty Limited 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, 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 For the purposes of these Terms and Conditions:

(a) the term "Masterprint Pty Limited's charge" refers in each case to the standard or usual fee charged by Masterprint Pty Limited from time to time in respect of the Order;
(b) "preliminary work" means all and any work performed by Masterprint Pty Limited 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 Masterprint Pty Limited at the time when Masterprint Pty Limited supplied the Estimate;
(c) "additional work" includes all work undertaken by Masterprint Pty Limited as a consequence of the customer's variation, alteration or modification of its instructions in relation to the Order; and
(d) "freight costs and charge" includes all costs and expenses incurred by Masterprint Pty Limited in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise.

4. DELIVERY

4.1 Notification

Masterprint Pty Limited shall notify the customer when the Goods are ready for collection.

4.2 Collection

The customer must collect the goods from Masterprint Pty Limited's premises upon being notified by Masterprint Pty Limited that the Goods are ready for collection. If Masterprint Pty Limited 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 and are not reasonably not fit for intended purpose. If the customer wishes to reject the Goods, the customer must notify Masterprint Pty Limited of the rejection:
(i) if Masterprint Pty Limited agreed to deliver the Goods to the customer's premises - within 7 days of delivery (or less if mutually agreed);
(ii) 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 Masterprint Pty Limited delivers the Goods to the customer's premises - at the time of delivery;

(b) otherwise - at the time Masterprint Pty Limited 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 Masterprint Pty Limited at the time the customer notifies Masterprint Pty Limited that the Goods are rejected.

5. PAYMENT

5.1 Time for payment

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

5.2 Interest

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

5.3 Advance and progress payments

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

5.4 Damages

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

6. NON-PAYMENT

6.1 Retention of ownership

Until the customer has paid all sums outstanding in relation to the Goods:

(a) Title in the Goods shall not pass from Masterprint Pty Limited to the customer.
(b) If the Goods are in the customer's possession, the customer shall hold the Goods as trustee for Masterprint Pty Limited and must store the Goods so that they are clearly identifiable as the property of Masterprint Pty Limited.
(c) Masterprint Pty Limited may call for and recover possession of the Goods (for which purposes Masterprint Pty Limited'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 Masterprint Pty Limited if so directed by Masterprint Pty Limited.
(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 Masterprint Pty Limited and the customer shall account to Masterprint Pty Limited for those sums; and
(ii) if Masterprint Pty Limited requires, the customer shall assign to Masterprint Pty Limited the customer's claim against the third party and shall execute all documents necessary to effect that assignment.

6.2 General lien

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

7. LIABILITY

7.1 Proofs

If Masterprint Pty Limited submits to the customer a proof of the proposed work, Masterprint Pty Limited 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 commenced. If the customer does not request a proof in writing for each job, Masterprint Pty Limited assumes the correctness of the artwork is not critical to the performance of the goods and therefore will not be responsible for any errors in the goods.

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

Masterprint Pty Limited 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 Masterprint Pty Limited for a breach of a Non-excludable Right is limited, at Masterprint Pty Limited'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, Masterprint Pty Limited 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 Masterprint Pty Limited'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, Masterprint Pty Limited 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 Masterprint Pty Limited.

7.6 Customer's property

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

7.7 Force Majeure

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

8. GENERAL MATTERS

8.1 Periodicals

If the contract between Masterprint Pty Limited 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 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), Masterprint Pty Limited may terminate the contract at any time if the customer is in breach of any of 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 Masterprint Pty Limited specific instructions in relation to style, type or layout:

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

8.3 Oversight

The customer must pay for oversight matter (being matter produced on the customer's instructions but not used in a publication for which it was intended). The customer may instruct Masterprint Pty Limited to retain oversight matter for future issues of the publication or to discard the oversight matter.

8.4 Outside work

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

(a) Masterprint Pty Limited 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) Masterprint Pty Limited 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 Masterprint Pty Limited at the time of incorporation.

8.5 Material supplied by customer

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

8.6 Property left with Masterprint Pty Limited

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

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

8.8 Ancillary materials

Unless Masterprint Pty Limited and customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencil, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Masterprint Pty Limited 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 Masterprint Pty Limited.

8.9 Copyright

(a) Copyright in all artistic and literary works authored by Masterprint Pty Limited shall be the property of Masterprint Pty Limited.

(b) The customer:

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

8.10 Ideas

The customer must keep confidential and not use any ideas communicated by Masterprint Pty Limited to the customer without Masterprint Pty Limited's written consent.

8.11 Electronic/magnetic media

All disks, tapes, compact discs or other media (other than media supplied by the customer) used by Masterprint Pty Limited to store data for the purposes of completing the Order are the property of Masterprint Pty Limited. The customer cannot require Masterprint Pty Limited to supply to the customer any data so stored. In the event that Masterprint Pty Limited does supply any data so stored or created Masterprint Pty Limited may charge for supplying such data to the customer.

8.12 Storage of electronic data

Masterprint Pty Limited will not be responsible for storing any data on disks, tapes, compact discs or other media when the Order has been completed. If Masterprint Pty Limited agrees to store such data, Masterprint Pty Limited 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 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 or Territory in which Masterprint Pty Limited'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.

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9. GOODS AND SERVICES TAX

9.1 All amounts are GST exclusive amounts. All amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

9.2 All amounts to be increased for any GST. If any GST is payable by Masterprint Pty Limited in respect of the supply of any goods or services to the customer, then the amount expressed or described in these Terms and Conditions ("Original Amount") is to be increased so that Masterprint Pty Limited receives an amount ("Increased Amount") which, after subtracting the GST liability of Masterprint Pty Limited on that Increased Amount, results in Masterprint Pty Limited retaining the Original Amount after payment of that GST liability.

9.3 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.

9.4 Masterprint Pty Limited to assist Customer

Masterprint Pty Limited 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 Masterprint Pty Limited. This includes Masterprint Pty Limited 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.