

1. Definitions

- 1.1 “ADMC” shall mean Australian Digital Media Consultants Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Australian Digital Media Consultants Pty Ltd.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by ADMC to the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by ADMC to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by ADMC to the Customer.
- 1.5 “Services” shall mean all Services supplied by ADMC to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between ADMC and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by ADMC from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by ADMC shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of ADMC.
- 2.4 The Customer shall give ADMC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by ADMC as a result of the Customer's failure to comply with this clause.

3. Price And Payment

- 3.1 At ADMC's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by ADMC to the Customer in respect of Goods supplied; or
 - (b) ADMC's quoted Price (subject to clause 3.2) which shall be binding upon ADMC provided that the Customer shall accept ADMC's quotation in writing within thirty (30) days.
- 3.2 ADMC reserves the right to change the Price in the event of a variation to ADMC's quotation.
- 3.3 At ADMC's sole discretion a deposit may be required.
- 3.4 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Customer of his original instructions or by the manuscript copy being, in ADMC's opinion, poorly prepared or by the Customer's requirements being different from those originally submitted or described may be charged to the Customer and shown as extras on the invoice.
- 3.5 All work carried out whether experimentally or otherwise at the Customer's request will be charged to the Customer.
- 3.6 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Customer and shown as extras on the invoice.
- 3.7 All extra work caused by author's corrections including resetting and/or the over-running of composition may be charged to the Customer and shown as extras on the invoice.
- 3.8 Unless otherwise agreed, the Customer shall bear the cost of fonts, or colour proofs, or artwork, specially bought at his request for his work.
- 3.9 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 3.10 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and ADMC.
- 3.11 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At ADMC's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at ADMC's address; or
 - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by ADMC or ADMC's nominated carrier).
- 4.2 At ADMC's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then ADMC shall be entitled to charge a reasonable fee for redelivery.

- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 The failure of ADMC to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 ADMC shall not be liable for any loss or damage whatever due to failure by ADMC to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1 If ADMC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, ADMC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ADMC is sufficient evidence of ADMC's rights to receive the insurance proceeds without the need for any person dealing with ADMC to make further enquiries.

6. Title

- 6.1 ADMC and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid ADMC all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to ADMC in respect of all contracts between ADMC and the Customer.
- 6.2 Receipt by ADMC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then ADMC's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until ADMC shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from ADMC to the Customer ADMC may give notice in writing to the Customer to return the Goods or any of them to ADMC. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) ADMC shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to ADMC then ADMC or ADMC's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and until such time as ADMC has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for ADMC; and
 - (f) the Customer shall not deal with the money of ADMC in any way which may be adverse to ADMC; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ADMC; and
 - (h) ADMC can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that ADMC will be the owner of the end products.

7. Customer's Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind, or cancel any contract with ADMC or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by ADMC and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

8. Defects

- 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify ADMC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford ADMC an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ADMC has agreed in writing that the Customer is entitled to reject, ADMC's liability is limited to either (at ADMC's discretion) replacing the Goods or repairing the Goods. Where the Customer is a consumer as defined in the TPA then the client shall also be entitled to a refund.
- 8.2 Whilst every care is taken by ADMC to carry out the instructions of the Customer, it is the Customers responsibility to undertake a final proof reading of the Goods. ADMC shall be under no liability whatever for any errors not corrected by the Customer in the final proof reading. Should the Customers alterations require additional proofs this shall be invoiced as an extra.
- 8.3 When style, type or layout is left to ADMC's judgement if the Customer requests further alterations to the copy this will be invoiced as an extra.
- 8.4 Goods printed or made to special order, Customer specification or non-catalogue items are under no circumstances acceptable for credit or return. Cancellation of orders for printed or special or non-catalogue items will definitely not be accepted, once these orders are in production.
- 8.5 Goods will not be accepted for return other than in accordance with 8.1 above.

9. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Warranty

10.1 To the extent permitted by statute, no warranty is given by ADMC as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. ADMC shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Intellectual Property

11.1 Where ADMC has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in ADMC, and shall only be used by the Customer at ADMC’s discretion.

11.2 The Customer warrants that all designs or instructions to ADMC will not cause ADMC to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Client agrees to indemnify ADMC against any action taken by a third party against ADMC in respect of any such infringement.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify ADMC from and against all costs and disbursements incurred by ADMC in pursuing the debt including legal costs on a solicitor and own client basis and ADMC’s collection agency costs.

12.3 Without prejudice to any other remedies ADMC may have, if at any time the Customer is in breach of any obligation (including those relating to payment), ADMC may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. ADMC will not be liable to the Customer for any loss or damage the Customer suffers because ADMC has exercised its rights under this clause.

12.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

12.5 Without prejudice to ADMC’s other remedies at law ADMC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ADMC shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to ADMC becomes overdue, or in ADMC’s opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Security And Charge

13.1 Despite anything to the contrary contained herein or any other rights which ADMC may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to ADMC or ADMC’s nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that ADMC (or ADMC’s nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should ADMC elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify ADMC from and against all ADMC’s costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint ADMC or ADMC’s nominee as the Customer’s and/or Guarantor’s true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

14.1 ADMC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice ADMC shall repay to the Customer any sums paid in respect of the Price. ADMC shall not be liable for any loss or damage whatever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by ADMC (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Customer and/or the Guarantor/s agree for ADMC to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by ADMC.
- 15.2 The Customer and/or the Guarantor/s agree that ADMC may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 15.3 The Customer consents to ADMC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by ADMC for the following purposes and for other purposes as shall be agreed between the Customer and ADMC or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by ADMC, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 15.5 ADMC may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 16.3 ADMC shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ADMC of these terms and conditions.
- 16.4 In the event of any breach of this contract by ADMC the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by ADMC.
- 16.6 ADMC may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.7 ADMC reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ADMC notifies the Customer of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by ADMC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ADMC's right to subsequently enforce that provision.