

# TERMS + CONDITIONS OF SUPPLY

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These terms and conditions of sale apply to all goods and services **BMG Australasia Pty Ltd ACN 167 622 415** ("Us", "Our" or "We") provides to every person who orders or buys goods and services from Us ("Customer" or "You"). If there is any inconsistency between these terms and conditions and the Order, then the terms of the Order take precedence. Any quote issued by us is subject to these terms and conditions and any request you make to Us for further action after receipt of a quote constitutes acceptance by You of these terms and conditions.

## 1. QUOTES

Quotes issued by Us in writing are valid for 30 days from the date of the quote unless we advise You earlier that the quote is no longer valid. All quotes are issued subject to these terms and conditions. We reserve the right to invoice You additional reasonable charges if after requesting a quote:

- 1.1 You request any changes to Your instructions e.g. such as to the quantity, size or scope of works; or
- 1.2 if any information You provide before the issue of the quote was incorrect or incomplete and We reasonably incur additional costs to deliver the Works in accordance with the complete and accurate information.

## 2. ORDERS

- 2.1 An Order is created upon written acceptance of Our quote. You are responsible for any Additional Costs We incur by Us in performing the Work as a result of any errors or omissions in the Order.
- 2.2 If You cancel an Order for all or part of the Works, You indemnify Us against any Loss We incur as a result of the cancellation including, but not limited to, materials already ordered and loss of profit from other orders foregone to perform the Works.

## 3. ARTWORK (ASO) DOCUMENTATION

- 3.1 You must approve ASO documentation for the Works (by signature or confirmatory email) before We have any obligation to proceed with production of artwork.
- 3.2 We are not liable for any delays in performance of the Works caused as a result of Your delays in reviewing and proofing artwork and ASO documentation.
- 3.3 If You have not advised Us of any errors or omissions in the ASO documentation before the scheduled date for production of artwork described in an Order then regardless of whether You have approved the ASO documentation we may produce artwork in which case: (a) We will not be held responsible for any errors or omissions in artwork; and (b) You must reimburse Us for the cost of producing the artwork.
- 3.4 If You request us to provide studio services (creative design) in relation to any artwork You must pay Our reasonable costs (including the costs of any third party designer) in providing studio services regardless of whether an Order is created or not.
- 3.5 Printed artwork samples You request will incur separate, additional costs regardless of whether an Order is created or not.

## 4. PRODUCTION

- 4.1 You must provide us with a colour print of any artwork that We are required to supply as part of the Works. We are not responsible and are not liable for the accuracy of the colour of any artwork We produce if you have not supplied Us with a colour print of the required artwork and the applicable PMS colours.
- 4.2 Small deviations or slight variations from printed artwork samples that We provide to You that do not substantially affect Your use of artwork We produce will not entitle You to reject the artwork or make any claim in respect of it.
- 4.3 We will not be held responsible for the quality, design or workmanship of goods You supply and We install. This includes, but is not limited to, any artwork and printing a third party supplies on Your behalf.
- 4.4 We will not be held responsible for any damage caused to signage or other goods You supply, or are supplied on Your behalf that We cannot produce in-house.

## 5. FREIGHT

- 5.1 You must reimburse Us reasonable costs We incur for insuring Goods and for any freight costs and charges of shipping Goods to You or to the location described in an Order.
- 5.2 We will not be liable for loss or damage to Goods in transit.

## 6. DELIVERY AND INSTALLATION

- 6.1 We will perform the Works at the location described in the Order. You are responsible to ensure that:
  - 6.1.1 We have uninterrupted access necessary to perform the Works at the location;
  - 6.1.2 the conditions at the location at which the Works are to be performed comply with all applicable work health and safety laws and regulations and if there is any dispute regarding the requirements of work health and safety laws and regulations, such conditions as are reasonably considered by us to be compliant with all applicable work health and safety laws and regulations;
  - 6.1.3 You have obtained all required permits and authorisations necessary to perform the Works at the location and those permits and authorisations remain valid; and
  - 6.1.4 windows and other glass areas on which adhesive Goods are to be installed are clean and free from paint, plaster and other materials that would prevent proper adhesion of the materials to be installed.If because of any reason referred to in clauses 0, 0, 0 or 0 We spend additional time or We engage third parties to complete the Works then You must pay Additional Costs.
- 6.2 We are not responsible for any delay in performance of the Works caused by any matter or thing beyond our reasonable control including adverse weather conditions (including excessive heat or rain that prevents the proper delivery and/or installation of Goods), acts of God, war, fire, explosion, pandemic, machinery or equipment breakdown, strikes or other industrial dispute.

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- 6.3 If the performance or completion of the Works is delayed for any reason referred to in clause 0 then:
  - 6.3.1 the date for completion of the Works shall be extended by a period equal to the delay caused;
  - 6.3.2 You must pay for all Works already completed; and
  - 6.3.3 You must accept delivery of all Goods and Services forming part of the Works despite the delay.
- 6.4 You must notify Us within 48 hours of Us performing any part of the Works if You believe there is a defect in the Works or that we have not otherwise delivered or performed the Works to specifications. If You do not notify us within 48 hours, then You will be deemed to have accepted that part of the Works that has been performed.

## 7 INVOICING AND PAYMENT

- 7.1 You must pay invoices within the time for payment stated in the invoice.
- 7.2 If any invoice is due but unpaid We may refuse to deliver any part of the Works remaining to be delivered until the invoice is paid.
- 7.3 We may apply any payment received from You to any amount that You owe Us.
- 7.4 We may set off any amount that We owe You against any amount that You owe Us.
- 7.5 We may charge interest at the rated prescribed from time to time under the Penalty Interest Rate Act of Victoria (1983).
- 7.6 Risk in any Goods passes to You upon delivery.
- 7.7 Title in any Goods does not pass to You until all moneys You owe Us in connection with those Goods have been paid and until payment is received in full:
  - 7.7.1 You will hold the Works and any product of the Works as bailee for Us; and
  - 7.7.2 You authorise Us, our employees and agents to enter Your premises without notice and take possession of the Works and any product of the Works.

## 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 You warrant that you own all Intellectual Property Rights that We require to perform the Works and or that You have a licence authorising Us to reproduce all artistic works You supply to Us for the purposes executing the Works.
- 8.2 Unless specified otherwise in the Order all Intellectual Property Rights in the Works that we create vests in Us.
- 8.3 Subject to clause 0 and payment of all invoices due in respect of the Works We grant You a perpetual non-exclusive licence to use the Intellectual Property Rights created in all artistic works We supply as part of the Works.
- 8.4 We retain all Intellectual Property Rights in all data We develop by Us for the purposes of performing the Works.

## 9 LIMITATIONS ON LIABILITY

- 9.1 Except as provided otherwise in these terms and conditions We are not liable to You in contract or in tort for any Loss including any indirect or consequential Loss arising in connection with performance of the Works.
- 9.2 Subject to the Australian Consumer Law, if there is any defect in the Works then our liability is limited to:
  - 9.2.1 in the case of Goods, if the Goods can be repaired, the repair of the Goods;
  - 9.2.2 if the Goods cannot be repaired, the replacement of the Goods with goods of equivalent quality; and
  - 9.2.3 in the case of Services, the resupply of the Services.

## 10 INDEMNITY

You indemnify Us and agree to keep indemnified Us, our directors, officers, employees, contractors, consultants, agents and other servants against any and all Loss arising from or incidental to Our performance of the Works.

## 11 YOUR DEFAULT

- 11.1 Each of the following is an event of default:
  - 11.1.1 You breach any obligation under these terms and conditions including to pay any invoice from Us when due;
  - 11.1.2 You stop or threaten to stop doing business as You currently conduct business; or
  - 11.1.3 You become Insolvent.
- 11.2 If an event of default occurs We may do all or any of the following:
  - 11.2.1 refuse to complete the Works;
  - 11.2.2 repossess any Goods for which payment has not been received;
  - 11.2.3 retain for our own benefit any moneys paid on account of the Works; or
  - 11.2.4 recover from You liquidated damages on account of all Loss that We suffer or incur by reason of Your default.
- 11.3 In addition to our rights under clause 0 if an event of default occurs:
  - 11.3.1 all invoices from Us become payable immediately; and
  - 11.3.2 We may immediately terminate any other contract or credit arrangement that We have with You.

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## 12 PERSONAL PROPERTY SECURITY ACT

- 12.1 Unless separately defined in clause 0 terms used in this clause 12 have the meaning given to them in the PPSA.
- 12.2 You agree that We may do any one or more of the following:
- 12.2.1 register or give any notification in connection with any Security Interest;
  - 12.2.2 exercise rights in connection with the Security Interest;
  - 12.2.3 give notice to You requiring You to provide all requisite information and do anything at Your expense that We require to:
    - (a) ensure that any Security Interest is enforceable, perfected and otherwise effective;
    - (b) register or give any notification in connection with any Security Interest to confer the priority that We require;
    - (c) exercise rights in connection with the Security Interest; or
    - (d) ensure that Our rights and obligations are not adversely affected.
- 12.3 You must comply with the requirements of any notice issued by Us to You under clause 0 within the time stated in the notice for compliance.
- 12.4 You appoint us as Your attorney to complete and execute any documentation necessary to give effect to this clause 12.
- 12.5 You represent and warrant for the purposes of section 115 of the PPSA that the Works and the product of the Works are commercial property.
- 12.6 You acknowledge that if the Works or a product of the Works to which a Security Interest attached gives rise to Proceeds then the Security Interest continues in the Works or the product of the Works and attaches to Proceeds.
- 12.7 You acknowledge that in accepting any Order We have relied on the representations, warranties and acknowledgements in this clause 12.
- 12.8 You irrevocably and unconditionally waive your right to receive from Us any notice otherwise required to be issued by us under the PPSA (including notice of a Verification Statement) unless required by the PPSA and our obligation to issue that notice cannot be excluded.
- 12.9 You must immediately advise us of any change in Your name, address and other information provided to Us to enable Us to register a financing change statement under the PPSA if required.
- 12.10 The subject matter referred to in section 275(1) of the PPSA is confidential and neither We nor You can disclose that information to a third party.
- 12.11 The following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA are "contracted out" of these Term and Conditions:
- 12.11.1 section 95 (notice of removal of accession);
  - 12.11.2 section 96 (person with an interest may retain the accession);
  - 12.11.3 section 121(4) (enforcement of liquid assets – notice to grantor);
  - 12.11.4 section 125 (obligations to dispose of to retain collateral);
  - 12.11.5 section 130 (notice of disposal);
  - 12.11.6 section 132(3)(d) (contents of statement of account after disposal);
  - 12.11.7 section 132(4) (statement of account if no disposal);
  - 12.11.8 section 142 (redemption of collateral);
  - 12.11.9 section 143 (reinstatement of security agreement).
- 12.12 You acknowledge and agree that We have the power to retain, deal with or dispose of any property seized by Us in the manner described in sections 123, 125, 126, 128, 129 and 134(1) of the PPSA and in any other manner We consider appropriate.

## 13. INTERPRETATION

In these terms and conditions the following capitalised words and expressions have the meaning given to them below:

**Additional Costs** mean in respect of:

- (a) any Services, the time taken to perform the Services multiplied by the cost per hour of the person(s) required to do that act or thing; and
- (b) any Goods, the cost of repairing or resupplying the Goods.

**Goods** means any goods supplied by Us as part of the Works

**Insolvent** means insolvent within the meaning of the Corporations Act 2001 (Cth).

**Loss** means any loss or liability (whether actual, contingent or prospective), damage, cost and expense of whatever description.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made under that Act as amended from time to time.

**ASO** means Artwork Sign Off documentation

**Order** means the approved quote signed by You that includes information regarding:

- (a) the amount payable by you for the Works;
- (b) a description of the Works; and
- (c) any other conditions applicable to performance of the Works.

**Services** means any services provided by Us as part of the Works.

**Works** means the works including the Goods and Services described in the quote or Order.

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## 14. GENERAL

- 14.1 These terms and conditions are governed by the laws of the State of Victoria.
- 14.2 The Order and these terms and conditions constitute the entire agreement between You and Us in connection with its subject matter and supersede all previous agreements or understanding in connection with its subject matter.
- 14.3 Any indemnity given by You to Us survives completion of the Works and survives termination of all agreements between us.